State of Iowa

Iowa Administrative Code Supplement

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Agriculture and Land Stewardship Department[21]

Replace Chapter 43
Replace Chapter 62
Replace Chapter 68
Replace Chapter 92

Corrections Department[201]

Replace Chapter 37

Economic Development Authority[261]

Replace Analysis
Replace Chapter 104
Replace Reserved Chapter 110 with Chapter 110

Revenue Department[701]

Replace Analysis
Replace Chapter 71
Remove Reserved Chapters 126 to 149
Insert Chapter 126 and Reserved Chapters 127 to 149

CHAPTER 43
FERTILIZERS AND AGRICULTURAL LIME

[Appeared as Ch 9A, 1973 IDR]
[Prior to 7/27/88, see Agriculture Department 30—Ch 8]

21—43.1(200) Additional plant food elements besides N, P and K. Additional plant nutrients, besides nitrogen, phosphorus and potassium, when mentioned in any form or manner shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed shall be shown on the application for registration. The minimum percentages which will be accepted for registration except for those fertilizers designed to be applied and ordinarily applied directly to growing plant foliage to stimulate further growth are as follows:

Element	*Percent*
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

Guarantees or claims for the above-listed additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request. Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus and potassium. Warning or caution statements are required on the label for any product which contains 0.03 percent or more of boron in a water-soluble form or 0.001 percent or more of molybdenum.

21—43.2(200) Warning required. When any product which contains 0.03 percent or more of boron in a water-soluble form or 0.001 percent or more of molybdenum is incorporated in a commercial fertilizer a special warning tag or statement must be furnished to the purchaser. This tag or statement shall carry the word "WARNING" in letters at least one inch in height; it shall state the crops for which the fertilizer is to be used and it shall state that use of the fertilizer on any other than those recommended may result in serious injury to the crops. The tag or statement is to be attached to or printed on the bag or other container in which the fertilizer is sold; for bulk fertilizers the statement must be placed on the invoice or other document which shall accompany delivery and be supplied to the purchaser at the time of delivery as provided in Iowa Code section 200.6(2).

21—43.3(200) Specialty fertilizer labels. Specialty fertilizer products shall be labeled to show the following information, if not appearing on the face or display side in a readable and conspicuous form, shall occupy at least the upper third of a side of the container.

Net Weight
Brand Name
Grade
Guaranteed Analysis:
Total Nitrogen (N) _____ %
_____% Ammoniacal Nitrogen**
_____% Nitrate Nitrogen**
_____% Water Insoluble Nitrogen*
Available Phosphorus (P) or P_2O_5 or both _____ %
Soluble Potassium (K) or K_2O or both _____ %
Additional Plant Nutrients, if claimed, and in the order and not less than the minimum percentage as shown in 21—43.1(200).
**Potential Acidity or Basicity _____ % or _____ lbs.
Calcium Carbonate Equivalent per ton.
Name and Address of Registrant

NOTES:
*If claimed or the statement "organic" or "slow acting nitrogen" is used on the label.
**If claimed or required.

21—43.4(200) Pesticides in fertilizers. When an insecticide, herbicide or any other additive for pest control is added to fertilizer the product must be registered and guaranteed with respect to the kind and percentage of each of these additives as well as with respect to plant food elements. In a prominent manner the label on the package shall state the crops for which the fertilizer is to be used and shall state that the use of the fertilizer on any other crops or under conditions other than those recommended may result in serious injury to crops.

This rule is intended to implement Iowa Code sections 200.7 and 200.11.

21—43.5(200) Cancellation or suspension of registration or license. If official sampling and analysis of any registered commercial fertilizer or soil conditioner indicates that the product does not meet the guarantees or claims made for it, or that the products do not meet the minimum plant nutrient values established by rule 21—43.1(200), the secretary may notify the person guaranteeing the product that the quality of the fertilizer or soil conditioner must be improved prior to any further sale, distribution or offer for sale of such products in Iowa and the secretary may request that monetary reimbursement be made to purchaser to rectify the deficiency of the product reported by laboratory analysis and the monetary reimbursement be reported to the department. Reimbursement must be made within 30 days of the reported deficiency. In addition, if it appears to the secretary that the composition of the article does not warrant the claims made for it, or if the article, its labeling or other material required by Iowa Code section 200.5(6) to be submitted to the secretary, do not comply with the requirements of the Iowa fertilizer law, the secretary may revoke, suspend or refuse to register any commercial fertilizer or soil conditioner; or refuse to issue or revoke or suspend any license issued under Iowa Code chapter 200.

This rule is intended to implement Iowa Code sections 200.5 and 200.14.

21—43.6(200) Standard for the storage and handling of anhydrous ammonia. The Compressed Gas Association's (CGA's) American National Standard Safety Requirements for the Storage and Handling of Anhydrous Ammonia (6th edition), commonly referred to as ANSI/CGA G-2.1 2014, is adopted by this reference as the official requirement for the storage and handling of anhydrous ammonia, with the following exceptions:

1. Strike subrule 3.1 in its entirety and insert in lieu thereof the following:

3.1 Any person required to handle, transfer, transport, or otherwise work with ammonia shall be trained once each calendar year prior to handling to understand the properties of ammonia, to become

competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency.

2. Insert a new subrule 5.1.3 to read as follows:

5.1.3 Equipment and components must be installed, operated, and maintained in accordance with the manufacturer's recommendations or best engineering practices.

3. The following subrule 5.3.4 as set out in CGA G-2.1 2014, page 16, is included:

5.3.4 In the absence of a specific determination by local jurisdictions, separation distances for new, additional or relocated ammonia stationary storage containers and placements of containers covered by Sections 9, 10, 11 and 12 after January 1, 2002, shall be in accordance with Table 5:

Minimum Separation Distances for Location of Ammonia Storage Containers

	Minimum Distances (in feet or meters) from Each Container to:			
Nominal Capacity of Container[3] (Gallons or Cubic Meters)	Mainline of Railroad[4]	Highway[5] or Line of Adjoining Property which can be built upon	Place of Public Assembly[6] or Residential Occupancy[7]	Institutional Occupancy[8]
Over 500 to 2,000 gals[9]	100 ft	25 ft	150 ft	250 ft
Over 2,000 to 30,000 gals	100 ft	50 ft	300 ft	500 ft
Over 30,000 to 100,000 gals	100 ft	50 ft	450 ft	750 ft
Over 100,000 gals	100 ft	50 ft	600 ft	1000 ft
Over 2 to 8 m^3	30 m	8 m	45 m	75 m
Over 8 to 110 m^3	30 m	15 m	90 m	150 m
Over 110 to 400 m^3	30 m	15 m	140 m	230 m
Over 400 m^3	30 m	15 m	180 m	300 m

1) Separation distances referred to are approximate and based on experience with minor releases.

2) For additional distances, see 5.3.2, 5.3.3, 5.3.4, 5.3.5, 5.3.6 and 6.4.6.

3) The nominal capacity of multiple containers shall be aggregated, but only if containers are interconnected and safeguards do not exist to prevent a leak from one container from emptying interconnected containers.

4) Class II track or better. See 49 CFR 213.9 [8].

5) A highway is defined as a public way for purposes of vehicular travel, including the entire area within the right of way. See American Association of State Highway and Transportation Officials (AASHTO) Transportation Glossary (1983) [37].

6) Public assembly occupancy is a premise or that portion of a premise where large numbers of people congregate and from which occupants cannot quickly vacate the space. Public assembly occupancies include, among others, auditoriums, ballrooms, classrooms, passenger depots, restaurants, and theatres. See ANSI/ASHRAE 15 [1].

7) Residential occupancy is a premise or that portion of a premise that provides the occupants with complete independent living facilities including permanent provisions for living, sleeping, eating, cooking, and sanitation. Residential occupancies include, among others, dormitories, hotels, multiunit apartments, and private residences. See ANSI/ASHRAE 15 [1].

8) Institutional occupancy is a premise or that portion of a premise from which, because they are disabled, debilitated, or confined, occupants cannot readily leave without the assistance of others. Institutional occupancies include, among others, hospitals, nursing homes, asylums, and spaces containing locked cells. See ANSI/ASHRAE 15 [1].

9) For 500 gallons (2m^3) or less, see 5.3.1 and 5.3.3.

4. Strike subrule 5.3.6 in its entirety and insert in lieu thereof the following:

5.3.6 Areas within 10 feet (3 meters) of a storage container shall be maintained clear of dry grass and weeds and other combustible materials. Areas shall be kept clear of debris or any item that would interfere with emergency actions or evacuation as well as materials or objects not necessary for the operation of the storage system and components.

5. Strike subrule 5.6.6 in its entirety and insert in lieu thereof the following:

5.6.6 Adequate provisions shall be made to protect the storage system and components, including all exposed piping, from physical damage which could result from impact by moving machinery, automobiles or trucks, or any other equipment at the facility. See also 6.7.1.

6. Insert a new subrule 5.10.8.2 to read as follows:

5.10.8.2 For transfer of liquids from a container utilizing a remote transfer point, each liquid filling connection shall have a positive shut-off valve in conjunction with either an internal back-pressure check valve or an internal excess flow valve. Vapor connections shall have a positive shut-off valve between the supply source and the intake side of the pump. The liquid line supplying this transfer from the pump shall have an emergency shut-off valve between the supply source and the intake side of the pump. The emergency shut-off valve shall remain closed when the plant is not in use.

NOTE: The internal back-pressure check valves or internal excess flow valves shall be installed in the facility piping prior to the positive shut-off valves. These valves shall be installed so that any break will occur on the side of the transfer hose. Protection from pull away while connected is the same as described in 5.10.8.1.

7. Add the following subrule 5.10.10:

5.10.10 Anhydrous ammonia shall be vented into an adequate supply of water. For this purpose, an adequate supply of water means ten gallons of water for each gallon of liquid ammonia or fraction thereof which is contained in the hose or vessel to be vented. The ammonia should be injected into the water as near the bottom of a vented water containing vessel as practical. If a hose is used to inject ammonia into water, the hose should be weighted or secured so that the end of the hose will remain near the bottom of the vessel. An approved sparging device is recommended. Any aqueous ammonia solution resulting from the venting process shall be disposed of safely and properly.

NOTE: Ammonia vapor may be flared off when appropriate equipment is used to not allow ammonia vapor to escape unchecked into the atmosphere. This section does not apply to venting of a coupling between transfer hose and nurse tank or applicator or venting of vapor through 85 percent bleeder valve when loading a nurse tank or applicator.

8. Add the following subrule 5.10.10.1:

5.10.10.1 Anhydrous ammonia shall not be vented into the air. Each transport truck unloading point at an anhydrous ammonia storage facility shall have a valve for venting purposes installed in the piping at or near the point where the piping and hose from the transport truck are connected. Anhydrous ammonia from any transport truck hose shall be vented into an adequate supply of water. For this purpose, an adequate supply of water means ten gallons of water for each gallon of liquid ammonia or fraction thereof which could be contained in the hose. The ammonia should be injected into the water as near the bottom of a vented water containing vessel as practical. If a hose is used to inject ammonia into water, the hose should be weighted or secured so that the end of the hose will remain near the bottom of the vessel. An approved sparging device is recommended. Any aqueous solution resulting from the venting process shall be disposed of safely and properly.

9. Add the following subrule 5.10.11:

5.10.11 All anhydrous ammonia storage locations shall have a permanent working platform installed at each nurse tank or applicator loading location. The working platform shall be designed to allow for connecting and disconnecting of transfer hoses without standing on equipment being loaded.

NOTE: This section does not apply to nurse tanks or applicators with a working surface designed for loading purposes.

10. Add the following subrule 6.3.1.1:

6.3.1.1 Containers designed with internal pressure relief systems are exempt from this requirement.

11. Strike subrule 9.7.3 in its entirety and insert in lieu thereof the following:

9.7.3 A cargo tank of 3,500 gallons or less water capacity may be unloaded into permanent storage locations meeting the requirements of 3.4.1 and 5.10.8 through 5.10.8.2 or into implements of husbandry meeting the requirements of Section 11. A cargo tank of greater than 3,500 gallons water capacity but not greater than 5,000 gallons water capacity may be unloaded at permanent storage locations meeting the requirements of 3.4 and 5.10.8 through 5.10.8.2 or into a portable application equipment container

which is capable of holding the entire load. A cargo tank of greater than 5,000 gallons water capacity may only be unloaded into a permanent storage location meeting the requirements of 3.4 and 5.10.8 through 5.10.8.2 and capable of holding the entire load.

12. Strike subrule 11.3.5 in its entirety and insert in lieu thereof the following:

11.3.5 All vapor and liquid connections, except pressure relief valves and those specifically exempt in 5.5.5 and 5.5.6, shall be equipped with approved excess flow valves or may be fitted with quick-closing internal valves, which shall remain closed except during operating periods.

1. All vapor and liquid connections shall be closed except during operation periods.
2. Shared piping where multiple containers are plumbed together shall be equipped with additional excess flow valves or back-pressure check valves or both to meet the requirements of 5.10.8.
3. Mechanical remote shut-off valves may be added or substituted for excess flow valves in the piping after the vapor and liquid connections as a means of controlling the flow.

13. Strike subrule 11.6.1 in its entirety and insert in lieu thereof the following:

11.6.1 Each person operating, repairing appurtenances of, or inspecting a nurse tank shall comply with the following requirements:

1. Any person required to handle, transfer, transport, or otherwise work with ammonia shall be trained once each calendar year prior to handling to understand the properties of ammonia, to become competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency; and
2. Any person making, breaking or testing any ammonia connection, transferring ammonia or performing maintenance or repair on an ammonia system under pressure shall wear chemical splash goggles and protective gloves impervious to ammonia. A full face shield may be worn over the goggles. However, a face shield shall not be worn as a substitute for a primary eye protection device (goggles).

14. Strike subrule 11.6.2 in its entirety and insert in lieu thereof the following:

11.6.2 Each nurse tank shall be equipped with the following safety equipment and features:

1. Each container shall have for first-aid purposes at least 5 gallons (20 liters) of clean water in a container designed to provide ready access to the water for flushing any area of the body contacted by ammonia; and
2. A legible decal listing first-aid procedures to follow for injuries caused by ammonia.

15. Strike subrule 12.3.3 in its entirety and insert in lieu thereof the following:

12.3.3 An excess flow valve is not required in the vapor connections, provided that the controlling orifice is not in excess of 0.4375 inches (11.1 mm) in diameter and the valve is a hand-operated (attached hand wheel or equivalent) shut-off valve. Bleed off of vapors may be done into water meeting requirements of 5.10.10 if vapor connections cannot be made to the supplying vessel when filling applicator tanks. Vapors may be vented into the ground in the field of application under proper field conditions.

16. Strike subrule 12.4.1 in its entirety and insert in lieu thereof the following:

12.4.1 Each person operating, repairing appurtenances of, or inspecting an applicator tank shall comply with the following requirements:

1. Any person required to handle, transfer, transport, or otherwise work with ammonia shall be trained once each calendar year prior to handling to understand the properties of ammonia, to become competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency; and
2. Any person making, breaking or testing any ammonia connection, transferring ammonia or performing maintenance or repair on an ammonia system under pressure shall wear chemical splash goggles and protective gloves impervious to ammonia. A full face shield may be worn over the goggles. However, a face shield shall not be worn as a substitute for a primary eye protection device (goggles).

This rule is intended to implement Iowa Code section 200.14.

[**ARC 2059C**, IAB 7/22/15, effective 1/1/16; see Delay note at end of chapter]

21—43.7(200) Groundwater protection fee.

43.7(1) There shall be paid by the licensee, as licensed under Iowa Code section 200.4, to the secretary for all commercial fertilizers and soil conditioners sold or distributed in this state, a groundwater protection fee of 75 cents per ton based on an 82 percent nitrogen solution. Other product formulations containing nitrogen shall pay a fee based on the percentage of actual nitrogen contained in the formulation with 82 percent nitrogen solution serving as the base. Product formulations containing less than 2 percent nitrogen shall be exempt from the payment of a groundwater protection fee. Payment of the groundwater protection fee by any licensee exempts all other persons, firms or corporations from the payment.

43.7(2) Every licensee and any person required to pay a groundwater protection fee under this chapter shall:

a. File not later than the last day of January and July of each year, on forms furnished by the secretary, a semiannual statement setting forth the number of net tons of commercial fertilizer or soil conditioners containing nitrogen which were distributed in this state during the preceding six-month period; and upon filing the statement shall pay the groundwater protection fee at the rate stated in subsection 1 of this rule, except that manufacturers of individual packages of fertilizer containing 25 pounds or less shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of net tons of fertilizer containing nitrogen distributed in this state in packages of 25 pounds or less during the preceding 12-month period; and upon filing the statement shall pay the groundwater protection fee at the rate stated in subrule 43.7(1).

b. Reserved.

43.7(3) All licensees who distributed specialty fertilizer, as defined in Iowa Code section 200.3, paragraph 5, or apply specialty fertilizer for compensation, shall file not later than the last day of July of each year, on forms furnished by the secretary, an annual statement setting forth the number of tons of fertilizer containing nitrogen distributed in this state and listing the manufacturer from which the product was purchased but no groundwater protection fee shall be due.

This rule is intended to implement Iowa Code section 200.9.

21—43.8 to **43.19** Reserved.

21—43.20(201) Agricultural lime.

43.20(1) *Notification of production.* The manufacturer or producer of agricultural lime, limestone or aglime shall notify the secretary seven calendar days prior to the manufacture or production of agricultural lime, limestone, or aglime so that samples may be taken.

43.20(2) *Sample fee.* The manufacturer or producer of agricultural lime, limestone, or aglime shall pay a fee of no more than $25 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University for each sample taken at the manufacturer's or producer's facilities.

This rule is intended to implement Iowa Code sections 201.6 and 201.12.

21—43.21(200) Minimum requirements for registration of fertilizer and soil conditioners.

43.21(1) Fertilizer and soil conditioners submitted for registration may be required to be tested for a minimum of two growing seasons in at least three Iowa crop reporting districts in accordance with standards for efficacy testing. The results of testing shall be reviewed by the secretary's pesticide and fertilizer advisory committee. The testing requirement may be waived if research has been conducted with crops and under conditions relevant to the state of Iowa. The secretary's pesticide and fertilizer advisory committee may require the applicant for registration to submit an economic or environmental impact statement.

43.21(2) Applications for registration shall include methods of laboratory analysis of products used for achieving results consistent with the label guarantee.

This rule is intended to implement Iowa Code sections 200.5 and 200.14.

21—43.22(200) Provisional product registration. A provisional product registration may be granted during the time required to complete efficacy testing to achieve product registration. Prior to the growing seasons or granting of a provisional product registration, the registrant must submit a plan for efficacy testing to the department for approval by the first day of February. A fee of $100 shall be collected for each provisional product registration. Annual reviews of provisional product registrations shall determine if satisfactory progress is being made toward achieving product registration. A provisional product registration may be canceled if it appears that conditions under which provisional product registration was granted have not been completed.

The registrant does not have the right to sell, distribute or promote any fertilizer or soil conditioner within the state of Iowa under a provisional product registration.

This rule is intended to implement Iowa Code sections 200.5 and 200.14.

21—43.23(200) Review of product registrations. Fertilizer and soil conditioner registrations may be reviewed to determine that the product meets claims for which registration was granted. If credible cause can be demonstrated that product claims have not been substantiated, registration may be canceled and a provisional registration may be issued until minimum requirements for registrations of fertilizers and soil conditioners again have been satisfied.

21—43.24(200) Product claims. Product claims may be substantiated by one of two methods: (1) efficacy testing; or (2) substantiation of data relevant to Iowa crops and soils. Efficacy testing and substantiation shall be completed when requested by the department to support claims made for fertilizer and soil conditioner that is sold, distributed or offered for sale in Iowa. Documentation substantiating product claims by efficacy testing shall contain the following information:

1. All guaranteed ingredients must be identified and indicated by percentage.
2. State the crop or soil response being measured.
3. The research facility and investigators conducting the trials.
4. Dates and locations of trials.
5. The trials must be conducted, utilizing the principles of experimental design and methods consistent with those in agricultural research. This involves raw data from proper treatment selection, replication and randomization in such a manner that statistical analysis of data is possible.
6. Exclude consumer testimonials.

This rule is intended to implement Iowa Code sections 200.5 and 200.14.

21—43.25 to **43.29** Reserved.

21—43.30(201A) Definitions. When used in this chapter:

"Agricultural liming material" means a product containing calcium and magnesium compounds capable of neutralizing soil acidity.

"Brand" means the term, designation, trade name, product name, or other specific designation under which individual agricultural liming material is offered for sale.

"Bulk" means in nonpackaged form.

"Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as percentage of pure calcium carbonate.

"Effective calcium carbonate equivalent (ECCE)" means the acid-neutralizing capacity of an agricultural liming material or specialty limestone.

"Fineness" means the percentage by weight of the material which will pass U.S. standard sieves of specified sizes.

"Industrial by-product" means agricultural liming material containing calcium or a combination of calcium with magnesium and capable of neutralizing soil acidity which is derived from any industrial waste or by-product.

"Label" means any written or printed material on or attached to the package or on the delivery ticket which accompanies bulk shipments.

"Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

"Pelletized lime" means agricultural liming material containing calcium or a combination of calcium with magnesium and capable of neutralizing soil acidity which has been processed into pellet or granular form, with or without binding agents.

"Percent" or *"Percentage"* means by weight.

"Permanent production facilities" means stationary crushing and screening equipment which is immobile.

"Person" means individual, partnership, association, firm or corporation.

"Portable plant" means mobile crushing and screening equipment mounted on wheels.

"Quarry lime" means agricultural liming material containing calcium or a combination of calcium with magnesium which has been excavated from the earth and processed by crushing and screening and capable of neutralizing soil acidity.

"Specialty limestone" means agricultural liming material distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

"Ton" means a net weight of 2,000 pounds avoirdupois.

"Water treatment lime" means agricultural liming material containing calcium or a combination of calcium with magnesium and capable of neutralizing soil acidity which is derived from water treatment plants.

"Weight" means the weight of undried agricultural liming material or specialty limestone offered for sale.

21—43.31(201A) Determination of ECCE. Agricultural liming material or specialty limestone offered for sale, sold or otherwise distributed in this state shall be analyzed on the basis of the number of pounds of effective calcium carbonate equivalent per ton, using the method set forth in this rule.

43.31(1) A fineness factor shall be determined as follows:

a. Multiply the percent of the total material passing the number 4 sieve by one-tenth.

b. Multiply the percent of the total material passing the number 8 sieve by three-tenths.

c. Multiply the percent of the total material passing the number 60 sieve by six-tenths. Add the results obtained from paragraph *"a," "b"* and *"c"* of this subrule to obtain the fineness factor.

43.31(2) Multiply the fineness factor obtained by using the method in subrule 43.31(1) by the percent of calcium carbonate equivalent in the material to obtain the percent of ECCE.

43.31(3) The percent of ECCE obtained in subrule 43.31(2) shall be reduced by the percent of moisture contained in the sample.

43.31(4) Multiply 2,000 pounds by the percent ECCE obtained in subrule 43.31(3) to determine the number of pounds of ECCE per ton of agricultural liming material or specialty limestone.

21—43.32(201A) Sample procedure.

43.32(1) Samples of agricultural liming material for analyzing the number of pounds of ECCE shall be obtained by taking samples from the manufacturer's production belt or stockpile. Samples shall be taken at locations where there are permanent production facilities once each calendar month during the months that agricultural liming material is being produced. Samples shall be taken at locations where there are no permanent production facilities once during the first week that a portable plant is at the location producing agricultural liming material and once each week during the period that the portable plant is at the location until a total of five representative samples have been accumulated and submitted for analysis, after which a sample shall be obtained and tested once each calendar month during the months

in which agricultural liming material is being produced. The manufacturer or producer of agricultural liming material shall notify the secretary of agriculture or person or persons appointed by the secretary of the production of agricultural liming material seven calendar days prior to the manufacture or production of agricultural liming material so that samples may be obtained by a person or persons appointed by the secretary in compliance with this rule.

43.32(2) Samples of specialty limestone for analyzing the number of pounds of ECCE shall be submitted to the secretary of agriculture by the manufacturer or producer of specialty limestone for analysis in accordance with rule 21—43.33(201A).

43.32(3) Samples of agricultural liming material may be obtained from manufacturers' or producers' production belts, stockpiles or in transportation and analyzed for compliance with certification requirements of rule 21—43.35(201A). Samples of specialty limestone may be obtained from packages and analyzed for compliance with certification requirements of rule 21—43.35(201A).

43.32(4) Samples of water treatment plant lime for analyzing the number of pounds of ECCE shall be obtained by taking samples from the water plant designated sampling point. Samples shall be taken once each month during the months when agricultural liming material is being taken off-site for land application. The producer of the agricultural liming material shall notify the secretary of agriculture or person(s) appointed by the secretary about the intent to land apply the liming material seven calendar days prior to the land application of agricultural liming material so that samples may be obtained in compliance with this rule.

21—43.33(201A) Sample analysis. Samples of agricultural liming material or specialty limestone obtained as provided in rule 21—43.32(201A) shall be submitted to the Soil Testing Laboratory, Iowa State University of Science and Technology, for analysis of acid neutralization capacity expressed as calcium carbonate equivalent, percentage of material passing a 4-, 8- and 60-mesh sieve and the percentage of moisture contained in the sample. The results of the analysis of each sample shall be submitted to the secretary of agriculture.

21—43.34(201A) Sample fee. The manufacturer or producer of agricultural liming material or specialty limestone shall pay a fee of no more than $25 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University of Science and Technology for each sample collected.

21—43.35(201A) Certification.

43.35(1) The secretary of agriculture shall, upon receipt of the analysis provided in rule 21—43.33(201A), certify the number of pounds of ECCE, using the method provided in rule 21—43.31(201A). The certification shall be forwarded to the manufacturer or producer from whom the sample was obtained by written notice and sent by United States mail.

Each certification of ECCE shall be based on the average of a maximum of five analyses from five samples. Each new analysis received shall be added to the previous five analyses and the oldest analysis shall be omitted. Fewer than five analyses shall be averaged on the basis of the actual number of analyses. Nothing in this rule shall preclude a manufacturer or producer from having a certification on separate stockpiles of agricultural liming material provided that each stockpile shall be separated from any other stockpile and each separate stockpile has been sampled and certified as required.

43.35(2) All agricultural liming material or specialty limestone offered for sale, sold or otherwise distributed shall be offered for sale, sold or distributed by the pound of ECCE. Any person who offers for sale, sells or distributes agricultural liming material or specialty limestone shall affix or cause to be affixed to every bill of lading, scale ticket, delivery receipt or other instrument of sale or package the certification of the secretary of agriculture of the number of pounds of ECCE per ton in the agricultural liming material or specialty limestone.

The certification shall be in the following form: Iowa Secretary of Agriculture Certified _____ pounds ECCE per ton. The pounds of ECCE certified by the secretary of agriculture for the agricultural liming material or specialty limestone shall be inserted in the space provided.

43.35(3) Agricultural liming material which has been further processed, subsequent to certification, as provided in rule 21—43.31(201A), including but not limited to decreasing or increasing moisture content, shall have the certification adjusted accordingly. Within 48 hours from the time of delivery, the adjusted certification shall be provided to the ultimate consumer of the agricultural liming material in writing together with the certification as provided in subrule 43.35(2) and shall accurately reflect the ECCE of the agricultural liming material.

43.35(4) All agricultural liming material and specialty limestone certifications shall expire on January 1, three years after being issued, provided no samples have been obtained and analyzed.

21—43.36(201A) Compliance with certification. If official sampling and analysis of agricultural liming material or specialty limestone in accordance with subrule 43.32(3) and rule 21—43.33(201A) indicates that the agricultural liming material or specialty limestone does not meet a minimum of 90 percent of the certification as provided in rule 21—43.35(201A), the secretary shall notify the manufacturer or producer of the agricultural liming material or specialty limestone that the certification must be corrected prior to any further sale, distribution or offer for sale of the agricultural liming material or specialty limestone in Iowa. The secretary may request that monetary reimbursement be made to the purchaser to rectify the deficiency of the agricultural liming material or specialty limestone and that the monetary reimbursement be reported to the department. Reimbursement must be made within 30 days of the reported deficiency.

21—43.37(201A) Labeling. Agricultural liming material shall not be offered for sale, sold or otherwise distributed in this state unless a label accompanies the agricultural liming material which provides the identification of the type of agricultural liming material in accordance with rule 21—43.30(201A).

21—43.38(201A) Toxic materials prohibited. It shall be unlawful for any manufacturer or producer of agricultural liming material or specialty limestone to sell, distribute or offer for sale any agricultural liming material or specialty limestone which contains toxic materials in quantities injurious to plant, animal, human or aquatic life or which causes soil or water contamination. The secretary may require additional laboratory analysis be conducted and results submitted to the department by the manufacturer or producer of agricultural liming material or specialty limestone to determine that the product does not contain an injurious quantity of toxic materials.

21—43.39(201A) Added materials. It shall be unlawful to sell, distribute or offer for sale any agricultural liming material or specialty limestone which contains other added materials unless the added materials are registered and guaranteed as provided in Iowa Code section 200.5(1), except binding materials used in the production of pelletized lime as defined in rule 21—43.30(201A).

21—43.40(201A) Egg shells. The following shall apply to any agricultural liming material that consists primarily of egg shells:

1. With the exception of paragraph "2," the material shall be stored in a structure that prevents precipitation from contacting the stored material.
2. The material may be stored in a manner not meeting the requirements of paragraph "1" for a period of not more than 14 days in the field where the material will be land-applied.

These rules are intended to implement Iowa Code chapters 200, 201, and 201A.

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[1] January 1, 2016, effective date of ARC 2059C [43.6] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held August 11, 2015.

CHAPTER 62
REGISTRATION OF IOWA-FOALED HORSES AND IOWA-WHELPED DOGS

[Prior to 7/27/88, see Agriculture Department 30—Ch 14]

21—62.1(99D) Definitions. For purposes of this chapter, unless a different meaning is clearly indicated by the context:

"Breeder of a foal" means the owner of the brood mare at the time the foal is dropped.

"Breeder of a greyhound dog" means the owner of the pup(s) at the time of whelping.

"Department" means the Iowa department of agriculture and land stewardship.

"Onionskin" means an original individual greyhound application form of the National Greyhound Association.

"Owner of a thoroughbred stallion," "owner of a standardbred stallion" or *"owner of a quarter horse stallion"* means the person who owns at least 51 percent of a thoroughbred, standardbred or quarter horse stallion for one service season or more.

"Secretary" means the Iowa secretary of agriculture.

[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.2(99D) Iowa horse and dog breeders' fund and Iowa thoroughbred horse breeders' promotion fund. Iowa-foaled horses and Iowa-whelped dog records and breeder payments:

The department will establish and maintain a records system entitled the "Iowa Horse and Dog Breeders' Fund." This records system will feature a list of thoroughbred, standardbred and quarter horses who have qualified to be Iowa-foaled horses, as well as a listing of all greyhound dogs that have qualified to be Iowa-whelped dogs.

A sum equal to 12 percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. This percentage shall be applicable to all races that are limited to Iowa-foaled horses or Iowa-whelped dogs as well as all other races which are won by Iowa-foaled horses or Iowa-whelped dogs.

The 12 percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which, in turn, shall deposit the 12 percent in a special fund to be known as the "Iowa Horse and Dog Breeders' Fund" and pay the 12 percent by December 31 of each calendar year to the breeder of the winning Iowa-foaled horse or the breeder of the Iowa-whelped dog.

A sum equal to 6 percent of the purse won by an Iowa-foaled thoroughbred horse shall be used as a supplement to promote the thoroughbred horse breeding industries for horses placing second through fourth place. This percentage shall be applicable to all thoroughbred races that are held at Prairie Meadows racetrack.

The 6 percent supplement shall be withheld by the licensee from the horse breeders' fund for thoroughbreds and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which, in turn, shall deposit it in a special fund to be known as the "Iowa Thoroughbred Horse Breeders' Promotion Fund." This fund will pay 6 percent of the money earned to each horse placing second, third and fourth place by December 31 of each calendar year to the breeder of the Iowa-foaled thoroughbred horse.

62.2(1) All foals/horses qualified through the department to be Iowa-foaled horses and dogs qualified to be Iowa-whelped will be listed by a department registration number. The Iowa-foaled horse mare breeder(s) at the time of foaling, or the owner of the standardbred and quarter horse brood mare at the time of breeding, or the owner of the dog, as a pup, at the time of whelping, shall be properly recorded with a registration number.

62.2(2) A race track licensee shall hold at least one race on each racing day limited to Iowa-foaled horses or Iowa-whelped dogs. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted.

62.2(3) As the department receives this money from the licensee, the department shall credit each horse or dog, by registration number, with the amount. At the end of each calendar year, the department

shall pay the amount credited to winning Iowa-foaled horses or lowa-whelped dogs to the Iowa-foaled horse breeder or to the Iowa-whelped dog breeder.

62.2(4) The department will implement and maintain a system of keeping the Iowa state racing commission informed and updated relative to all horses and dogs which are eligible to race as Iowa foaled or Iowa whelped.

62.2(5) The department shall have the authority to inspect the premises to verify that the animals are maintained under conditions appropriate to each species to ensure that the animals are properly cared for and that the standards of proper animal welfare are met.

[**ARC 9978B**, IAB 1/25/12, effective 1/5/12]

21—62.3(99D) Forms. The following forms to qualify thoroughbred, standardbred and quarter horses as registered and certified Iowa-foaled horses and to qualify dogs as registered and certified Iowa-whelped dogs are available and can be obtained from the department. The forms shall provide for the applicant to certify the truthfulness and accuracy of the information.

62.3(1) *Thoroughbred, standardbred, quarter horse.*

a. Application for Iowa Stallion Eligibility Certificate, Form S-1.
b. Iowa Stallion Eligibility Certificate, Form S-2.
c. Record of Mares Bred, Form S-3.
d. Brood Mare Registration Application, Form M-4.
e. Mare Status Report, Form M-5.
f. Mare Transfer of Ownership, Form M-6.
g. Application for Iowa-foaled Registration, Form I-6.
h. Certificate for Iowa-foaled Status, Form I-7.

62.3(2) *Greyhound.*

a. Application for Iowa-whelped Litter Registration, Form GH-1.
b. Application for Iowa-whelped Individual Registration, Form GH-2.
c. Bitch Information Report, Form GH-3.

21—62.4(99D) Disciplinary actions.

62.4(1) A person shall not knowingly provide false information to the department. If the department finds that a person knowingly furnished false information to the department relating to the registration of a horse or dog under these rules, then the department may deny, temporarily suspend, or permanently suspend all registrations and eligibility certificates by or on behalf of the person. The department may withhold payment of breeder's awards to a breeder if the breeder is not in compliance with Iowa Code chapter 162, 717, or 717B or rules adopted pursuant to those chapters. If a breeder does not come into compliance, the department may deny the registration of a breeder's litters, dogs or foals. In addition, the department may temporarily or permanently suspend previously approved registrations.

62.4(2) Upon receipt of information from the Iowa racing and gaming commission that a person has been disqualified from licensure (suspended for 365 days or denied), the department shall deny, temporarily suspend, or permanently suspend all registrations and eligibility certificates by or on behalf of the person. The department may determine horses certified as Iowa-foaled horses or dogs certified as Iowa-whelped dogs prior to commission action are eligible to race as Iowa-foaled or Iowa-whelped; however, the disqualified person is denied receipt of moneys from the Iowa horse and dog breeders' fund. If the Iowa racing and gaming commission subsequently grants licensing privileges to a previously disqualified person, the department shall make an independent determination as to the person's eligiblity to have registrations and eligibility certificates by or on behalf of the person reinstated or granted.

62.4(3) Whenever action is taken under this rule, the department shall remit the withheld breakage to the breakage pool at the track where the money was generated. In such cases, the money shall instead be retained by the racetrack and distributed in the manner as provided in Iowa Code section 99D.12.

62.4(4) The registration of an Iowa-foaled horse or an Iowa-whelped dog shall not be denied or suspended under this rule if either of the following applies:

a. The horse or dog had previously been owned by the person subject to discipline, but the horse or dog had been, in good faith, transferred to another person prior to the imposition of discipline by the department. The department, however, may still impose the discipline if the department determines that the purpose of the transfer was to circumvent the discipline.

b. The horse or dog is in the possession of or under the control of a person subject to discipline but the person has never had an ownership interest in the horse or dog.

21—62.5(99D) Access to premises and records. The department inspectors shall have access to records and to the premises on which qualified Iowa-whelped dogs and Iowa-foaled horses are kept.

21—62.6(99D) Registration fees.

62.6(1) *Iowa-foaled horses.* For an Iowa-foaled horse to be eligible to race in Iowa, a $30 registration fee shall be imposed at the time of registration of each stallion, mare or foal registered.

62.6(2) *Iowa-whelped dogs.* The following fees shall be imposed at the time of registration:

a. Registration of a dam, $25.

b. Registration of a litter, $10.

c. Registration of a dog, $5.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 9978B**, IAB 1/25/12, effective 1/5/12]

21—62.7 to **62.9** Reserved.

THOROUGHBRED DIVISION

21—62.10(99D) Iowa thoroughbred stallion requirements. To qualify as an Iowa thoroughbred stallion, a stallion must be certified by and registered with the department.

62.10(1) Rescinded IAB 8/20/14, effective 9/24/14.

62.10(2) All Iowa registered stallions must meet one of the following qualifications:

a. Stallions that have previously bred a mare in any state must have residency in Iowa from January 1 through December 31 of the first year of service as a registered Iowa stallion. Further, all stallions meeting this residency requirement must be registered with the department as a registered Iowa stallion the year prior to standing.

b. Stallions that have not previously bred a mare in any state must have residency in Iowa from its registration with the department as a registered stallion through December 31 of the year of registration.

62.10(3) Any false information submitted by applicant for an Iowa Stallion Eligibility Certificate shall be grounds for denial of registration and certification.

[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.11(99D) Notification requirements. The owner or owner's authorized representative must give immediate notification to the department if the stallion leaves the state. If the stallion leaves the state for breeding purposes, the Iowa Stallion Eligibility Certificate will be invalidated. Subsequently, if the owner(s) wishes to return the stallion to service in Iowa, the original application procedure will be required. If an Iowa registered stallion is moved within Iowa to stand at another location, the department must be notified before the stallion is offered for service at the new Iowa location. If an Iowa registered stallion is moved, temporarily, to another state for medication, its certification will remain valid as long as the department is properly notified.

21—62.12(99D) Stallion qualification and application procedure. To qualify a stallion as an Iowa registered stallion the owner is required to complete the application for an Iowa Stallion Eligibility Certificate and forward it to the Horse Racing Section, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. The issuance of an Iowa Stallion Eligibility Certificate by the department is contingent on the stallion being registered and certified by the

department. This certificate shall be valid as long as all stallion residency and notification procedures are properly met.

62.12(1) Rescinded, effective 6/13/86.

62.12(2) In the event of a sale or transfer of ownership of a thoroughbred stallion, qualified with the department, the transfer of ownership shall be executed on the back of the Iowa Stallion Eligibility Certificate for that stallion and endorsed certificate forwarded to the department.

62.12(3) If the new owner(s) wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate along with a copy of the bill of sale and meet all other department requirements.

62.12(4) The Iowa Stallion Eligibility Certificate shall be available for inspection by a department inspector on the premises where the stallion stands.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.13(99D) Application information. Every person wanting to offer or stand a stallion as an Iowa registered stallion must file with the department a written application, utilizing Form S-1, and providing the following:

1. Name of stallion;
2. The name(s) of the owner(s) and address(es);
3. The place where the stallion stood for service during the previous year;
4. The place where the stallion will stand for service;
5. Statement that the stallion will not stand for service any place outside the state of Iowa during the calendar year in which the foal is conceived;
6. Details concerning right of ownership, such as a bill of sale, contract or other documents providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements and other types of concessions; and any other relevant information requested by the department;
7. An official certificate of registration from the Jockey Club of New York, which will be returned within ten working days to the applicant.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.14(99D) Breeding record—report of mares bred. Every person offering or standing any stallion for services as an Iowa registered stallion shall maintain a complete breeding record of the stallion and all mares of any breed bred to the stallion.

62.14(1) Such records shall be available to the department for inspection by a department inspector and shall include the following information:

a. The name of the mare;
b. The dam and sire of the mare;
c. The name and address, including zip code, of the owner(s) of the mare;
d. The first and last dates on which the stallion was bred to the mare;
e. The place where the stallion was standing for service at the time of the breeding of the mare;
f. The person(s) in charge of the stallion at the time of service to the mare, and any other relevant information requested by the department.

62.14(2) A report entitled "Record of Mares Bred" must be filed with the department by September 1 of each year. The report must be filed on Form S-3 provided by the department.

21—62.15(99D) Iowa-foaled horses and brood mares. To qualify for the "Iowa Horse and Dog Breeders' Fund" program, horses must be Iowa foaled.

62.15(1) All thoroughbred horses foaled in Iowa which are registered by the Jockey Club as Iowa foaled shall be considered to be Iowa foaled.

62.15(2) Eligibility for brood mare residence shall be achieved by meeting at least one of the following:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

62.15(3) Except as provided in this subrule, a foal shall not be eligible for Iowa-foaled status if the mare and foal leave or are removed from the state before the foal is inspected by a department inspector. However, a foal may be registered if it left or was removed from the state prior to inspection by the department inspector if all of the following conditions are met.

a. The owner or agent of the owner of the foal has contacted the department in writing or by fax. The written or faxed notification must be received by the department at least 72 hours prior to the time the mare and foal are to be removed from the state.

b. The department has been unable to get an inspector to the location where the mare and foal are located prior to their being moved from the state.

c. The owner of the foal submits a signed, dated and notarized affidavit executed by a veterinarian licensed to practice in Iowa. The affidavit must attest that the veterinarian saw the foal within seven days of its birth, that the veterinarian has reason to believe that the foal was born in Iowa, and the basis for the veterinarian's belief that the foal was born in Iowa. In addition, the affidavit shall also contain the name of the dam, the state number of the dam, the sex and a physical description of the foal, the date of the birth and the foaling address. It must be postmarked to the department no more than ten days after foaling.

d. The owner has filed a timely mare status report on the mare of the foal.

62.15(4) Additionally, for mares to be eligible for the "Iowa Horse and Dog Breeders' Fund" program and for their foals to be eligible to enter races limited to Iowa-foaled horses, it is required that:

a. A Thoroughbred Brood Mare Registration Application, Form M-4, must be submitted to the department prior to foaling. This registration will cover the mare her entire productive life as long as there is not a change of ownership and the thoroughbred mare meets the eligibility rules set forth in 62.15(2).

b. The owner(s) of the mare must complete and return the Mare Status Report (Form M-5) to the department by December 31 of the year bred.

c. The Mare Status Report must show the place where the mare will foal in this state and the person who will be responsible for the mare at the time of foaling.

d. The Mare Status Report must indicate if the mare is to be bred back to an Iowa registered stallion or to a stallion standing at service outside the state of Iowa. If the breeding plans as stated on the Mare Status Report are changed, the department must be notified.

62.15(5) A thoroughbred mare transfer of ownership, Form M-6, must be submitted to the department when a thoroughbred mare already in the program is purchased by a new owner. The Form M-6 will provide the following information:

a. Name of mare;

b. Date of transfer;

c. Color of mare;

d. State registration number;

e. National breed registration number;

f. Date of sale;

g. Name, address, and phone number of seller;

h. Name, address, and phone number of buyer.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.16(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All thoroughbred horses foaled in Iowa which are registered by the Jockey Club as Iowa foaled shall be considered to be Iowa foaled.

2. A foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

62.16(1) Both Iowa-foaled categories will require that an application to be an Iowa-foaled thoroughbred horse be filed with the department. The application must be filed on a Form I-6 provided by the department.

62.16(2) The form shall be completed by the owner(s) of the thoroughbred foal or horse or by the owner's authorized representative. This registration will cover the thoroughbred foal or horse its entire productive life.

62.16(3) The owner(s) shall complete an application for an Iowa-foaled Registration, showing the name of the brood mare, the name of the sire, date of foaling, color, as well as the sex and markings of the foal or horse.

62.16(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the Jockey Club Certificate by registered mail to the department. If the horse has met all requirements for registration, the department shall affix its official seal on the face of the Jockey Club Certificate, which shall include the department's registration number for the horse, and return the certificate within ten working days from the date of receipt. In the event the horse has met all requirements for registration but the department fails to affix its official seal on the face of the Jockey Club Certificate after proper presentation, the list of Iowa-foaled horses prepared by the department shall serve as official notification of Iowa-foaled status until the department's official seal is affixed. If the Jockey Club Certificate is lost or destroyed, a duplicate Jockey Club Certificate for that horse must be forwarded to the department and must be recertified by the department.

62.16(5) and **62.16(6)** Rescinded IAB 11/14/90, effective 12/19/90.

62.16(7) An investigator, appointed by the secretary, shall have access to the premises on which qualified mares, Iowa registered stallions and Iowa-bred foals or horses are kept.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.17 to **62.19** Reserved.

STANDARDBRED DIVISION

21—62.20(99D) Iowa standardbred stallion requirements. To qualify as an Iowa standardbred stallion, a stallion must be certified by and registered with the department.

62.20(1) Rescinded IAB 8/20/14, effective 9/24/14.

62.20(2) All Iowa registered standardbred stallions must meet one of the following qualifications:

a. Stallions that have previously bred a mare in any state must have residency in Iowa from January 1 through December 31 of the first year of service as a registered Iowa stallion. Further, all stallions meeting this residency requirement must register with the department as a registered Iowa stallion the year prior to standing.

b. Stallions that have not previously bred a mare in any state must have residency in Iowa from its registration with the department as a registered Iowa stallion through December 31 of the year of registration.

62.20(3) Any false information submitted by applicant for an Iowa Stallion Eligibility Certificate shall be grounds for denial of registration and certification.

[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.21(99D) Notification requirements. The owner or owner's authorized representative must give immediate notification to the department if the stallion leaves the state. If the stallion leaves the state before August 1 for breeding purposes, the Iowa Stallion Eligibility Certificate will be invalidated.

Subsequently, if the owner(s) wishes to return the stallion to service in Iowa, the original application procedure will be required. If an Iowa registered stallion is moved within Iowa to stand at another location, the department must be notified before the stallion is offered for service at the new Iowa location. If an Iowa registered stallion is moved, temporarily, to another state for medication, its certification will remain valid as long as the department is properly notified.

21—62.22(99D) Stallion qualification and application procedure. To qualify a stallion as an Iowa registered stallion, the owner is required to complete the application for an Iowa Stallion Eligibility Certificate and forward it to the Horse Racing Section, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. The issuance of an Iowa Stallion Eligibility Certificate by the department is contingent on the stallion being registered and certified by the department. This certificate shall be valid as long as all stallion residency and notification procedures are properly met.

62.22(1) Rescinded, effective 6/13/86.

62.22(2) In the event of a sale or transfer of ownership of a standardbred stallion, qualified with the department, the transfer of ownership shall be executed on the back of the Iowa Stallion Eligibility Certificate for that stallion and the endorsed certificate forwarded to the department.

62.22(3) If 51 percent of the new ownership is a bona fide Iowa resident(s) and wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate, a copy of the bill of sale and meet all other department requirements.

62.22(4) The Iowa Stallion Eligibility Certificate shall be available for inspection by a department inspector on the premises where the stallion stands.

This rule is intended to implement Iowa Code section 99D.22.

21—62.23(99D) Application information. Every person wanting to offer or stand a stallion as an Iowa registered stallion must file with the department a written application, utilizing Form S-1, and providing the following:

1. Name of stallion;
2. The name(s) of the owner(s) and address(es);
3. The place where the stallion stood for service during the previous year;
4. The place where the stallion will stand for service;
5. Statement that the stallion will not stand for service any place outside the state of Iowa before August 1 of the calendar year in which the foal is conceived;
6. Details concerning right of ownership, such as a bill of sale, contract or other documents providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements and other types of concessions; and any other relevant information requested by the department;
7. An official certificate of registration from the U.S. Trotting Association, which will be returned within ten working days to the applicant.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.24(99D) Breeding record—report of mares bred. Every person offering or standing any stallion for services as an Iowa registered stallion shall maintain a complete breeding record of the stallion and all mares of any breed bred to the stallion.

62.24(1) Such records shall be available to the department for inspection by a department inspector and shall include the following information:

a. The name of the mare;
b. The dam and sire of the mare;
c. The name and address, including zip code, of the owner(s) of the mare;
d. The first and last dates on which the stallion was bred to the mare;
e. The place where the stallion was standing for service at the time of the breeding of the mare;

f. The person(s) in charge of the stallion at the time of service to the mare, and any other relevant information requested by the department.

62.24(2) A report entitled "Record of Mares Bred" must be filed with the department by September 1 of each year. The report must be filed on Form S-3 provided by the department.

21—62.25(99D) Iowa-foaled horses and brood mares. To qualify for the "Iowa Horse and Dog Breeders' Fund" program, horses must be Iowa foaled.

62.25(1) All standardbred horses foaled in Iowa which are registered by the U.S. Trotting Association as Iowa foaled shall be considered to be Iowa foaled.

62.25(2) Eligibility for brood mare residence shall be achieved by meeting at least one of the following:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

62.25(3) Except as provided in this subrule, a foal shall not be eligible for Iowa-foaled status if the mare and foal leave or are removed from the state before the foal is inspected by a department inspector. However, a foal may be registered if it left or was removed from the state prior to inspection by the department inspector if all of the following conditions are met.

a. The owner or agent of the owner of the foal has contacted the department in writing or by fax. The written or faxed notification must be received by the department at least 72 hours prior to the time the mare and foal are to be removed from the state.

b. The department has been unable to get an inspector to the location where the mare and foal are located prior to their being moved from the state.

c. The owner of the foal submits a signed, dated and notarized affidavit executed by a veterinarian licensed to practice in Iowa. The affidavit must attest that the veterinarian saw the foal within seven days of its birth, that the veterinarian has reason to believe that the foal was born in Iowa, and the basis for the veterinarian's belief that the foal was born in Iowa. In addition, the affidavit shall also contain the name of the dam, the state number of the dam, the sex and a physical description of the foal, the date of the birth and the foaling address. It must be postmarked to the department no more than ten days after foaling.

d. The owner has filed a timely mare status report on the mare of the foal.

62.25(4) Additionally, for mares to be eligible for the "Iowa Horse and Dog Breeders' Fund" program and for their foals to be eligible to enter races limited to Iowa-foaled horses, it is required that:

a. A Standardbred Brood Mare Registration Application, Form M-4, must be submitted to the department prior to foaling. This registration will cover the mare her entire productive life as long as there is not a change of ownership and the standardbred mare meets the eligibility rules set forth in 62.25(2).

b. The owner(s) of the mare must complete and return the Mare Status Report, Form M-5, to the department by December 31 of the year bred.

c. The Mare Status Report must show the place where the mare will foal in this state and the person who will be responsible for the mare at the time of foaling.

d. The Mare Status Report must indicate if the mare is to be bred back to an Iowa registered stallion or to a stallion standing at service outside the state of Iowa. If the breeding plans as stated on the Mare Status Report are changed, the department must be notified.

62.25(5) A standardbred mare transfer of ownership, Form M-6, must be submitted to the department when a standardbred mare already in the program is purchased by a new owner. The Form M-6 will provide the following information:

a. Name of mare;

b. Date of transfer;
c. Color of mare;
d. State registration number;
e. National breed registration number;
f. Date of sale;
g. Name, address, and phone number of seller;
h. Name, address, and phone number of buyer.

This rule is intended to implement Iowa Code section 99D.22.
[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.26(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All standardbred horses foaled in Iowa which are registered by the U.S. Trotting Association as Iowa foaled shall be considered to be Iowa foaled.
2. A foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

62.26(1) Both Iowa-foaled categories will require that an application to be an Iowa-foaled standardbred horse be filed with the department. The application must be filed on a Form I-6 provided by the department.

62.26(2) The form shall be completed by the owner(s) of the standardbred foal or horse or by the owner's authorized representative. This registration will cover the standardbred foal or horse its entire productive life.

62.26(3) The owner(s) shall complete an application for an Iowa-foaled Registration, showing the name of the brood mare, the name of the sire, date of foaling, color, as well as the sex and markings of the foal or horse.

62.26(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the U.S. Trotting Association Certificate to the department. If the horse has met all requirements for registration, the department shall place the name and number of the horse on the official department list of Iowa-foaled standardbreds, which list shall constitute the official certification of the horse, and return the certificate within ten working days from the date of receipt. If the U.S. Trotting Association Certificate is lost or destroyed, a duplicate U.S. Trotting Association Certificate for that horse must be forwarded to the department and must be recertified by the department.

62.26(5) and **62.26(6)** Rescinded IAB 11/14/90, effective 12/19/90.

62.26(7) An investigator, appointed by the secretary, shall have access to the premises on which qualified mares, Iowa registered stallions and Iowa-bred foals or horses are kept.

This rule is intended to implement Iowa Code section 99D.22.
[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.27 to **62.29** Reserved.

QUARTER HORSE DIVISION

21—62.30(99D) Iowa quarter horse stallion requirements. To qualify as an Iowa quarter horse stallion, a stallion must be certified by and registered with the department.

62.30(1) Rescinded IAB 8/20/14, effective 9/24/14.

62.30(2) All Iowa registered quarter horse stallions must meet one of the following qualifications:

a. Stallions that have previously bred a mare in any state must have residency in Iowa from January 1 through December 31 of the first year of service as a registered Iowa stallion. Further, all stallions meeting this residency requirement must be registered with the department as a registered Iowa stallion the year prior to standing.

b. Stallions that have not previously bred a mare in any state must have residency in Iowa from its registration with the department as a registered Iowa stallion through December 31 of the year of registration.

62.30(3) Any false information submitted by applicant for an Iowa Stallion Eligibility Certificate shall be grounds for denial of registration and certification.
[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.31(99D) Notification requirements. The owner or owner's authorized representative must give immediate notification to the department if the stallion leaves the state. If the stallion leaves the state before August 1 for breeding purposes, the Iowa Stallion Eligibility Certificate will be invalidated. Subsequently, if the owner(s) wishes to return the stallion to service in Iowa, the original application procedure will be required. If an Iowa registered stallion is moved within Iowa to stand at another location, the department must be notified before the stallion is offered for service at the new Iowa location. If an Iowa registered stallion is moved, temporarily, to another state for medication, its certification will remain valid as long as the department is properly notified.

21—62.32(99D) Stallion qualification and application procedure. To qualify a stallion as an Iowa registered stallion, the owner is required to complete the application for an Iowa Stallion Eligibility Certificate and forward it to the Horse Racing Section, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. The issuance of an Iowa Stallion Eligibility Certificate by the department is contingent on the stallion being registered and certified by the department. This certificate shall be valid as long as all stallion residency and notification procedures are properly met.

62.32(1) Rescinded, effective 6/13/86.

62.32(2) In the event of a sale or transfer of ownership of a quarter horse stallion, qualified with the department, the transfer of ownership shall be executed on the back of the Iowa Stallion Eligibility Certificate for that stallion and the endorsed certificate forwarded to the department.

62.32(3) If 51 percent of the new ownership is a bona fide Iowa resident(s) and wishes to qualify the stallion as an Iowa stallion, then the new owner(s) must submit an application for an Iowa Stallion Eligibility Certificate, a copy of the bill of sale and meet all other department requirements.

62.32(4) The Iowa Stallion Eligibility Certificate shall be available for inspection by a department inspector on the premises where the stallion stands.

This rule is intended to implement Iowa Code section 99D.22.

21—62.33(99D) Application information. Every person wanting to offer or stand a stallion as an Iowa registered stallion must file with the department a written application, utilizing Form S-1, and providing the following:

1. Name of stallion;
2. The name(s) of the owner(s) and address(es);
3. The place where the stallion stood for service during the previous year;
4. The place where the stallion will stand for service;
5. Statement that the stallion will not stand for service any place outside the state of Iowa before August 1 of the calendar year in which the foal is conceived;
6. Details concerning right of ownership, such as a bill of sale, contract or other documents providing proof of ownership, which must show any agreements concerning breeding rights, repurchase agreements and other types of concessions; and any other relevant information requested by the department;
7. An official certificate of registration from the American Quarter Horse Association, Amarillo, Texas, which will be returned within ten working days to the applicant.

This rule is intended to implement Iowa Code section 99D.22.
[**ARC 1582C**, IAB 8/20/14, effective 9/24/14]

21—62.34(99D) Breeding record—report of mares bred. Every person offering or standing any stallion for services as an Iowa registered stallion shall maintain a complete breeding record of the stallion and all mares of any breed bred to the stallion.

62.34(1) Such record shall be available to the department for inspection by a department inspector and shall include the following information:

a. The name of the mare;

b. The dam and sire of the mare;

c. The name and address, including zip code, of the owner(s) of the mare;

d. The first and last dates on which the stallion was bred to the mare;

e. The place where the stallion was standing for service at the time of the breeding of the mare;

f. The person(s) in charge of the stallion at the time of service to the mare, and any other relevant information requested by the department.

62.34(2) A report entitled "Record of Mares Bred" must be filed with the department by September 1 of each year. The report must be filed on Form S-3 provided by the department.

21—62.35(99D) Iowa-foaled horses and brood mares. To qualify for the "Iowa Horse and Dog Breeders' Fund" program, horses must be Iowa foaled.

62.35(1) All quarter horses foaled in Iowa which are registered by the American Quarter Horse Association as Iowa foaled shall be considered to be Iowa foaled.

62.35(2) Eligibility for brood mare residence shall be achieved by meeting at least one of the following:

a. Thirty days' residency until the foal is inspected by a department inspector, if in foal to a registered Iowa stallion.

b. Thirty days' residency until the foal is inspected by a department inspector for brood mares which are bred back to registered Iowa stallions.

c. Continuous residency from December 31 until the foal is inspected by a department inspector if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

62.35(3) Except as provided in this subrule, a foal shall not be eligible for Iowa-foaled status if the mare and foal leave or are removed from the state before the foal is inspected by a department inspector. However, a foal may be registered if it left or was removed from the state prior to inspection by the department inspector if all of the following conditions are met.

a. The owner or agent of the owner of the foal has contacted the department in writing or by fax. The written or faxed notification must be received by the department at least 72 hours prior to the time the mare and foal are to be removed from the state.

b. The department has been unable to get an inspector to the location where the mare and foal are located prior to their being moved from the state.

c. The owner of the foal submits a signed, dated and notarized affidavit executed by a veterinarian licensed to practice in Iowa. The affidavit must attest that the veterinarian saw the foal within seven days of its birth, that the veterinarian has reason to believe that the foal was born in Iowa, and the basis for the veterinarian's belief that the foal was born in Iowa. In addition, the affidavit shall also contain the name of the dam, the state number of the dam, the sex and a physical description of the foal, the date of the birth and the foaling address. It must be postmarked to the department no more than ten days after foaling.

d. The owner has filed a timely mare status report on the mare of the foal.

62.35(4) Additionally, for mares to be eligible for the "Iowa Horse and Dog Breeders' Fund" program and for their foals to be eligible to enter races limited to Iowa-foaled horses, it is required that:

a. A Quarter Horse Brood Mare Registration Application, Form M-4, must be submitted to the department prior to foaling. This registration will cover the mare her entire productive life as long as there is not a change of ownership and the quarter horse mare meets the eligibility rules set forth in 62.35(2).

b. The owner(s) of the mare must complete and return the Mare Status Report, Form M-5, to the department by December 31 of the year bred.

c. The Mare Status Report must show the place where the mare will foal in this state and the person who will be responsible for the mare at the time of foaling.

d. The Mare Status Report must indicate if the mare is to be bred back to an Iowa registered stallion or to a stallion standing at service outside the state of Iowa. If the breeding plans as stated on the Mare Status Report are changed, the department must be notified.

62.35(5) A quarter horse mare transfer of ownership, Form M-6, must be submitted to the department when a quarter horse mare already in the program is purchased by a new owner. The Form M-6 will provide the following information:

a. Name of mare;
b. Date of transfer;
c. Color of mare;
d. State registration number;
e. National breed registration number;
f. Date of sale;
g. Name, address, and phone number of seller;
h. Name, address, and phone number of buyer.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.36(99D) Iowa-foaled horse status. Iowa-foaled horse status can be achieved the following two ways:

1. All quarter horses foaled in Iowa which are registered by the American Quarter Horse Association as Iowa foaled shall be considered to be Iowa foaled.
2. A foal from a mare meeting the eligibility requirements will be eligible to become an Iowa-foaled horse.

62.36(1) Both Iowa-foaled categories will require that an application to be an Iowa-foaled quarter horse be filed with the department. The application must be filed on a Form I-6 provided by the department.

62.36(2) The form shall be completed by the owner(s) of the foal or horse or by the owner's authorized representative.

62.36(3) The owner(s) shall complete an application for an Iowa-foaled Registration, showing the name of the brood mare, the name of the sire, date of foaling, color, as well as the sex and markings of the foal or horse.

62.36(4) To complete the official registration of an Iowa-foaled horse, the owner(s) must forward the American Quarter Horse Association Certificate to the department. If the horse has met all requirements for registration, the department shall affix its official seal on the face of the American Quarter Horse Association Certificate, which shall include the department's registration number for the horse, and return the certificate within ten working days from the date of receipt. In the event the horse has met all requirements for registration but the department fails to affix its official seal on the face of the American Quarter Horse Association Certificate after proper presentation, the list of Iowa-foaled horses prepared by the department shall serve as official notification of Iowa-foaled status until the department's official seal is affixed. If the American Quarter Horse Association Certificate is lost or destroyed, a duplicate American Quarter Horse Association Certificate for that horse must be forwarded to the department and must be recertified by the department.

62.36(5) and **62.36(6)** Rescinded IAB 11/14/90, effective 12/19/90.

62.36(7) An investigator, appointed by the secretary, shall have access to the premises on which qualified mares, Iowa registered stallions and Iowa-bred foals or horses are kept.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.37(99D) Embryo transfer for Iowa-foaled status. Embryo transfers may be eligible for Iowa-foaled status in accordance with the following provisions:

62.37(1) The recipient mare must be in the state of Iowa before the first day of December the year prior to foaling and must remain in Iowa until the foal or foals are born and are inspected by the department.

62.37(2) There is no limit to the number of foals eligible for Iowa-foaled status, provided the donor mare or a recipient mare:

a. Carries the foal full term;

b. Meets all the required Iowa rules; and

c. Is inspected by the department.

62.37(3) Registration and status reports of recipient mares and donor mares must be submitted to the department with proper identification, including but not limited to registration certificates, brands, and identification numbers prior to the time the donor mare is serviced.

62.37(4) Recipient mares must have a name, brand, or some means of identification and must be photographed for inspection purposes.

21—62.38 and **62.39** Reserved.

GREYHOUND DOG DIVISION

21—62.40(99D) Iowa-whelped dog requirements. A greyhound dog registered with the National Greyhound Association in Abilene, Kansas, may be registered as an Iowa-whelped dog if the following qualifications are met:

A dog must have been whelped in Iowa and raised for the first six months of its life in Iowa by an owner who qualifies as a two-year resident of Iowa prior to whelping.

Effective December 31, 1986, all commercial enterprises that own Iowa-whelped dogs must have been formed under the laws of the state for a period of two years. Effective September 30, 1995, 100 percent of all stockholders or members of such commercial enterprises must qualify as two-year residents of Iowa, prior to the whelping. Any entity registering greyhounds must have proof available at any time during the two-year residency of the members of the entity.

Sale and lease of dams and pups, between two-year bonafide residents of Iowa, is permissible at any time.

The department may take action under rule 21—62.43(99D) if the department determines that the Iowa owner of the dam has entered into an arrangement with another person, who is not eligible to be a breeder of Iowa-whelped dogs, wherein the Iowa owner is acting as an agent or other similar capacity so that Iowa-whelped status can be achieved.

21—62.41(99D) Procedures for registration. In order to qualify pups of a litter as lowa-whelped pups, the Iowa owner of the dam shall file a copy of her national registration papers (front and back), together with an Iowa Form GH-3 with the department within ten days prior to the expected whelping date of the litter. Late filings of GH-3 forms postmarked after the whelping date of the litter will not be accepted. After the GH-3 form is received by the department, a department inspector must inspect the dam and litter.

Within 30 days after litter registration with the National Greyhound Association, the original litter acknowledgment must be received by the department. A copy of the owner's driver's license, voter registration, or any other valid proof of residency of all first-time litter applicants must accompany the litter acknowledgment. Any late litter registrations will be assessed a penalty of $25. Litters over six months old will not be accepted for registration. After the litter registration, Form GH-1, is received by the department, a department inspector must inspect the litter. When the application for individual dog registration is made to the National Greyhound Association, the original registration certificate (yellow copy) or the onionskin shall be provided to the department, accompanying the department's Form GH-2.

62.41(1) The department will send the original registration certificate (yellow copy) or the onionskin to the National Greyhound Association, along with a request to stamp the original registration as Iowa whelped. The association will send the yellow registration copy to the department stamped "Certified Iowa-whelped." The department will make a copy of the registration for their files and return the original (yellow) copy to the owner.

62.41(2) All greyhound litters meeting the qualifications to be Iowa-whelped are eligible to be registered, and a pup of such litter is eligible to race as an Iowa-whelped dog. If it is determined that the breeder's kennel is not qualified, the litter will not be registered and approved until the kennel has complied with animal welfare laws and regulations. The "Certified Iowa-whelped" designation will begin on the date of approval and shall not be retroactive.

This rule is intended to implement Iowa Code section 99D.22.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—62.42 Rescinded, effective 6/13/86.

21—62.43(99D) Disciplinary procedures. Rescinded IAB 2/4/04, effective 3/10/04.

21—62.44(99D) Access to records. Rescinded IAB 2/4/04, effective 3/10/04.

These rules are intended to implement Iowa Code section 99D.22.

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CHAPTER 68
DAIRY

[Prior to 3/9/88, see Agriculture Department 30—Ch 30]
[Prior to 7/27/88, see 21—Ch 30]

21—68.1(192,194) Definitions. In addition to the definition found in the Code of Iowa, the following terms shall mean:

"Habitual violator" is a producer or other dairy industry business entity that is regulated by the department, for whom the monthly official records for somatic cell counts, bacteria, cooling or added water show that the violation has occurred eight times in a 12-month period, including the accelerated testing counts; or that has received three, two-of-four warning letters in a 12-month period; or that has received a second three-of-five, off-the-market letter in a 12-month period; or that has been cited for unsanitary conditions three times in a 12-month period; or that has been found with a fourth positive antibiotic in a 12-month period.

"Imminent hazard to the public health" means any condition so serious as to require immediate action to protect the public health. It shall include, but is not limited to: pesticide, antibiotic, or any other substance in milk or milk products considered to be dangerous if consumed by humans.

"P.M.O." means the Grade A Pasteurized Milk Ordinance, 2015 Revisions, from the United States Public Health Service/Food and Drug Administration, a copy of which is on file with the department and is incorporated into this chapter by reference and made a part of this chapter.

"Public health hazard" means any condition which, if not corrected, could endanger the public health.

"Qualified personnel" means employees certified or approved by the department to perform certain tasks as required by the Code of Iowa. It shall include, but not be limited to, dairy industry inspectors and hearing officers.

[**ARC 8699B**, IAB 4/21/10, effective 5/26/10; **ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.2(192) Licenses and permits required.

68.2(1) *Milk plant permit.* A person who brings, sends into, or receives into this state, milk or milk products for storage, transfer, processing, sale or to offer for sale, shall possess a "milk plant" permit.

68.2(2) *Grade A farm permit.* A person who operates a dairy farm to produce "Grade A milk" shall possess a "Grade A farm" permit.

68.2(3) *Grade B farm permit.* A person who operates a dairy farm to produce milk to be used as "milk for manufacturing purposes" shall possess a "Grade B farm" permit.

68.2(4) *Hauler/grader license.* A person engaged in the transporting, transferring, sampling, weighing or measuring of milk or a person engaged as a sample courier shall possess a "hauler/grader" license.

68.2(5) *Tester license.* A person who tests a dairy product for fat content to establish a value of the product shall possess a "tester's" license.

68.2(6) *Milk truck license.* A vehicle used primarily for collecting or transporting milk or milk product in the bulk shall possess a "milk truck" license.

68.2(7) *Dairy distributor's permit.* A person primarily in the business of distributing dairy products shall possess a "dairy distributor" permit.

21—68.3(192) License application. Reserved.

21—68.4(192) Certification of personnel. Certification programs conducted by the department shall follow closely the procedures as outlined in the P.M.O., Appendix B.

68.4(1) *Dairy industry inspectors.* Reserved.

68.4(2) *Field representative.* The department shall provide a certification program for individuals who work as "quality control" officers in the dairy industry but are not employees of the department. An individual certified as a "field representative" may perform certain tasks for the department when authorized to do so by the department.

21—68.5(190,192,194) Milk tests. The department recognizes approved methods of testing milk or cream for milk fat and other dairy products as specified in Standard Methods for the Examination of Dairy Products (17th Edition). That publication is hereby incorporated into this rule by this reference and made part thereof insofar as applicable, and a copy is on file with the department.

All milk, graded or tested, as provided by Iowa Code chapters 192 and 194 shall be graded and tested by samples which shall be taken in the following manner:

1. Samples may only be taken from vats or tanks which pass the required organoleptic test.
2. The temperature of milk in bulk tanks from which the sample is to be taken must not be higher than 45 degrees Fahrenheit for Grade A milk and 50 degrees Fahrenheit for manufacturing milk.
3. The temperature of the milk in the bulk tank shall be recorded on the farm milk room record, on the collection record, and on the sample container.
4. The volume of the milk in the bulk tank shall then be measured and the measurement shall be recorded.
5. Bulk tanks of less than 1,000-gallon size shall be agitated for a period of not less than five minutes. Bulk tanks of 1,000 gallons or greater shall be agitated for a period of not less than ten minutes. However, if the manufacturer of the bulk tank provides in writing that a lesser time for agitation is acceptable given the design of the bulk tank, then the lesser time is acceptable if the agitation is done in a manner and time consistent with the manufacturer's written instructions. In addition, the instructions must be conspicuously posted in the milk room. The instructions shall be laminated, framed under glass, or otherwise displayed so that the instructions will not deteriorate while displayed in the milk room.
6. The sample shall then be taken by using an approved sterile dipper and the milk shall be poured in an approved sterile sample container, until the sample container is three-quarters full.
7. The sample of milk shall then be immediately stored at a temperature of between 32 and 40 degrees Fahrenheit.
8. Grade A and Grade B milk shall not be picked up from a farm bulk milk tank when the milk volume in the tank is insufficient to completely submerge the bulk milk agitator paddle or, if there is more than one set of paddles, the lower set of agitator paddles into the milk.
9. No device, other than the bulk tank agitator, shall be used to agitate the milk in a farm bulk milk tank.
10. If the milk in a farm bulk milk tank cannot be properly agitated by the bulk tank agitator at the time of pickup by the milk hauler, the milk shall not be sold for human consumption.

This rule is intended to implement Iowa Code sections 194.4, 194.5, and 194.6.
[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.6(190,192,194) Test bottles. Test bottles and pipettes as approved by the Standard Methods for the Examination of Dairy Products, 17th Edition, are approved for universal use in Iowa. All test bottles should be graduated to the half point.

This rule is intended to implement Iowa Code chapters 192 and 194.
[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.7(190,192,194,195) Test transactions. Rescinded IAB 1/24/01, effective 2/28/01.

21—68.8(190,192,194,195) Cream testing. Rescinded IAB 1/24/01, effective 2/28/01.

21—68.9(192,194) Tester's license. The examination for a tester's license must be approved and administered by the department.

This rule is intended to implement Iowa Code sections 192.111 and 194.13.

21—68.10(192,194) Contaminating activities prohibited in milk plants. All "milk plants," "creameries," "transfer stations," "receiving stations," or any other facility for handling of bulk milk or milk products shall be a facility separated from any activity that could contaminate or tend to contaminate the milk or milk products.

21—68.11(192,194) Suspension of dairy farm permits.

68.11(1) Grade A and Grade B farm permit suspension and revocation. The department may temporarily suspend a Grade A or Grade B farm permit if the dairy farm fails to meet all the requirements as set forth in the P.M.O. or the Grade B United States Department of Agriculture document titled, "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," effective July 21, 2011. A Grade A farm under temporary suspension of the Grade A permit may sell the milk as "milk for manufacturing purposes" until reinstated as a Grade A farm if the former Grade A farm meets the requirements necessary to sell Grade B milk. A Grade B farm under temporary suspension of the Grade B permit may sell milk as "Undergrade Class 3" until reinstated as a Grade B farm if the former Grade B farm meets the requirements of Undergrade Class 3. If an inspection reveals a violation which, in the opinion of the inspector, is an imminent hazard to the public health, the inspector shall take immediate action to prevent any milk believed to have been exposed to the hazard from entering commerce. In addition, the inspector shall immediately notify the department that such action has been taken. In other cases, if there is a repeat violation of a dairy standard as determined by two consecutive routine inspections of a dairy farm, the inspector shall immediately refer the violation to the department for action. The department may revoke the dairy permit of a person that the department determines is a habitual violator as defined in rule 21—68.1(192,194).

68.11(2) Summary suspension of dairy farm permits. If the department finds that the public health, safety or welfare imperatively requires emergency action, summary suspension of a permit may be ordered pending proceedings for revocation or other action. If a permit is summarily suspended, no milk or milk products may be sold or offered for sale until permit is reinstated.

The following situations or incidents are situations in which summary suspension is appropriate:

a. Unclean milk contact surfaces of equipment or utensils.

b. Filthy conditions in a milking barn or parlor or in a cattle housing area, including several days' accumulation of manure in the milking barn gutters, calf pens or in other areas.

c. Filthy conditions in a cow yard and very dirty cows.

d. Filthy conditions in a milk room/milk house.

e. Water supply, water pressure, or water heating facilities not in compliance with standard operating procedures.

f. No access to hand-washing facility in the milk room/milk house.

g. Violation of standards under this chapter related to well construction or potability of water supply, including any cross connections between potable and nonpotable water sources.

h. Lack of an approved sanitizer in the milk room/milk house or adjacent storage area to meet the sanitizing requirements.

i. Visibly dirty udders and teats on cows being milked.

j. Milk not cooled in compliance with subrule 68.22(4).

k. Rodent activity in the milk room/milk house, or severe rodent activity in a milking barn or milking parlor or in a feed storage room.

l. Dead animals in the milking barn, parlor or cow yard.

m. Other situations where the department determines that conditions warrant immediate action to prevent an imminent threat to the public health or welfare.

68.11(3) A Grade A dairy producer whose permit has been suspended for a period of 12 consecutive months shall be downgraded to the Grade B market and be issued a Grade B permit.

[**ARC 8699B**, IAB 4/21/10, effective 5/26/10; **ARC 2104C**, IAB 8/19/15, effective 9/23/15]

GRADE A MILK

21—68.12(192) Milk standards. Standards for the production, processing, distribution, transportation, handling, sampling, examination, grading, labeling, sale and standards of identity of Grade A pasteurized milk, Grade A milk products and Grade A raw milk, the inspection of Grade A dairy herds, dairy farms, milk plants, milk receiving stations and milk transfer stations, the issuing, suspension and revocation of permits and licenses to milk producers, milk haulers, and milk distributors shall be regulated in

accordance with the provisions of the P.M.O., a copy of which is on file with the department and is incorporated into this rule by reference and made a part of this rule.

Where the mandatory compliance with the provisions of the appendixes therein is specified, the provisions shall be deemed a requirement of this rule.

Cottage cheese, dry curd cottage cheese and low fat cottage cheese bearing the Grade A label must conform to the standards of identity for Title 21, section 133 of the Code of Federal Regulations. However, cottage cheese, dry curd cottage cheese, and low fat cottage cheese shall not require a Grade A rating for sale within this state.

The discharge pipe on all gravity flow manure removal systems in milk barns shall be sufficient in size to handle the flow of manure generated by the cows using the system and any bedding materials or other materials that may enter the system.

Lighting systems shall be adequate to produce sufficient light as required by the Pasteurized Milk Ordinance. Such systems may include, but are not limited to, electrical powered lighting systems or pressurized white gasoline, pressurized kerosene, or battery powered lanterns. Such systems shall be designed and used in a manner that no odors can reasonably be expected to be emitted into the milk room unless there is sufficient ventilation to remove the odors. Lanterns shall be mounted on permanently affixed hooks and shall remain in place at all times.

If artificial lighting is provided by nonelectrical means, then a portable battery operated fluorescent light shall be made available for use and maintained in working order in the milk house. The fluorescent bulb shall either be shatterproof or shall be enclosed in a shatterproof enclosure.

Raw milk for pasteurization shall be cooled to 7° C (45° F) or less within two hours after milking. However, the blend temperature after the first milking and subsequent milkings shall not exceed 10° C (50° F). No specific bulk milk tank equipment is required in achieving this cooling standard; however, producers are expected to use all necessary diligence in achieving compliance.

This rule is intended to implement Iowa Code chapter 192.

21—68.13(192,194) Public health service requirements.

68.13(1) *Certification.* A rating of 90 percent or more calculated according to the rating system as contained in Public Health Service "Methods of Making Sanitation Ratings of Milk Shippers," 2013 Revision, shall be necessary to receive or retain a Grade A certification under Iowa Code chapter 192. That publication is hereby incorporated into this rule by this reference and made a part thereof insofar as applicable, and a copy is on file with the department.

68.13(2) *Documents.* The following publications of the Public Health Service of the Food and Drug Administration are hereby adopted. A copy of each is on file with the department:

1. "Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments," 2013 Revision.
2. "Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products," as incorporated in the P.M.O., Appendix J.
3. "Evaluation of Milk Laboratories," 2011 Revision.

This rule is intended to implement Iowa Code chapter 192.

[**ARC 8699B**, IAB 4/21/10, effective 5/26/10; **ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.14(190,192,194,195) Laboratories. Evaluation of methods and reporting of results for approval of a laboratory shall be based on procedures and tests contained in "Standard Methods for the Examination of Dairy Products, 17th Edition, 2004," and "Methods of Analysis of the Association of Official Analytical Chemists, 18th Edition, 2005." These publications are hereby incorporated into this rule by this reference and made a part thereof insofar as applicable; a copy of each is on file with the department. The health authority shall accept, without the imposition of a fee for testing or inspection, supplies of milk and milk products from an area or an individual shipper not under routine inspection provided they are delivered in closed and date-coded containers; provided further that if the code date

has expired, reasonable inspection testing fees may be assessed the processor or establishment having care, custody and control of the milk and milk products.

This rule is intended to implement Iowa Code chapter 192.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

GRADE B MILK

21—68.15(192,194) Milk standards. Standards for the production and processing of milk for manufacturing purposes shall conform to standards contained in the USDA document entitled "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," dated July 21, 2011, which is hereby incorporated into this rule by reference and made a part thereof insofar as applicable, and a copy is on file with the department.

[**ARC 8699B**, IAB 4/21/10, effective 5/26/10; **ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.16(194) Legal milk.

68.16(1) All milk delivered to a creamery, cheese factory or milk processing plant shall be subject to an examination, as provided in Iowa Code chapter 194, which shall be made at the plant if delivered in separate containers or before mixing with other milk collected in a bulk tank container and the examination shall be made by a licensed grader.

68.16(2) Every creamery, cheese factory or milk processing plant which gathers its milk by a bulk tank vehicle whether operated by an independent contractor or otherwise shall provide for a licensed grader in the operation of the bulk tank and for examination of the milk by the grader upon receipt thereof at the bulk tank.

68.16(3) The common change occurring in milk is the development of acidity, causing an acid flavor and odor, or even complete or partial coagulation. Other undesirable changes include sweet curdling, ropiness, gassiness and abnormal flavors, odors and colors. All milk showing any of these defects or any other defect must be rejected.

68.16(4) The presence of any insect in milk shall be sufficient cause for rejection.

This rule is intended to implement Iowa Code sections 194.2, 194.12 and 194.15.

21—68.17(194) New producers.

68.17(1) A "new producer" is a person selling milk for the first time who has not previously produced milk under Iowa Code chapter 194. A person who formerly produced farm-separated cream and is now selling, for the first time, whole milk for manufacturing purposes is considered a new producer. Similarly, a producer who previously supplied Grade A milk or sold milk in another state not reciprocating on quality transfers and offering manufacturing milk for sale in the state of Iowa for the first time shall be classified as a new producer. A new producer is also one who has not offered manufacturing milk for sale since the enactment of this milk grading law on July 4, 1959.

68.17(2) A licensed milk grader must examine, smell and taste the first lot of milk purchased from a new producer. This milk must also be tested immediately for extraneous matter or sediment content. However, it is not necessary to subject the milk of the new producer on the first delivery to a bacterial quality test. A test of this nature, however, must be made on a properly collected sample from this producer within 15 days thereafter.

68.17(3) If the sediment disc on the can of milk selected for test shows sediment in excess of 2.50 mg., all cans in the shipment shall be tested for sediment content in the same manner. Any milk showing sediment in excess of 2.50 mg. shall be rejected by the creamery, cheese factory or milk processing plant and not used for human consumption.

This rule is intended to implement Iowa Code section 194.2.

21—68.18(194) Testing and exclusion of Class III milk.

68.18(1) If a producer desires to change to another plant or factory, it is required that the first shipment of milk be accompanied by a written quality release form from the former purchaser. This quality release form must be requested by the producer in person or in writing from the manager of

the plant previously purchasing the milk. (Plant being asked for quality release shall give it to person with written order or deliver to producer making the request.) The new buyer shall not accept the first delivery until receiving a copy of the record of the producer's milk quality covering the preceding 90 days.

68.18(2) If the quality release form of this producer shows that the last test for bacterial quality indicated Class III milk, the new purchaser must then test first shipment of the transferring producer's milk by:

a. Organoleptic grading (physical appearance, taste and smell).

b. Sediment or extraneous matter.

c. An estimate of bacterial quality must be run within seven days from the last test date entered on the transfer form.

68.18(3) In other words, the previous record of bacterial quality is transferred. For example, if a producer has had two consecutive Class III bacterial estimates at one plant and then decides to sell the milk to another plant, the producer may not start as a new producer without previous history. This rule requires that the milk be tested for four consecutive weeks if there is no improvement in the quality of the milk during this period. Upon transferring to a new plant, the next bacterial test is entered on the record as the third of the four required tests.

68.18(4) If the fourth consecutive test is still Class III, this producer's milk may not be purchased by any plant for human consumption. The plant refusing this milk is required to notify the area resident inspector of the dairy products control bureau of the Iowa department of agriculture and land stewardship, immediately, in writing.

This rule is intended to implement Iowa Code section 194.2.

21—68.19(194) Unlawful milk. Four weekly Class III bacterial tests or milk containing radioactive agents "deleterious to health" shall make rejection compulsory and that milk shall not be accepted thereafter by any plant or creamery until authorized by the secretary of agriculture.

This rule is intended to implement Iowa Code sections 194.4 and 194.9.

21—68.20(194) Price differential. All purchasers or receivers of milk shall maintain a price differential between the grades of milk as defined by bacterial estimate test.

21—68.21(194) Penalties for plants and producers.

68.21(1) The scope of this section is broad, covering all plant employees, operators and milk haulers.

68.21(2) A producer selling milk to a new purchaser without first obtaining a quality release form from the former buyer, would be an example of noncompliance with the law and these rules.

This rule is intended to implement Iowa Code section 194.20.

21—68.22(192,194) Farm requirements for milk for manufacturing.

68.22(1) *Milking facility and housing.* A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean.

68.22(2) *Milk house or milk room.* A milk house or milk room conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and cooling milk and for washing, handling, and storing the utensils and equipment. Other products shall not be stored in the milk room which would be likely to contaminate milk, or otherwise create a public health hazard.

It shall be equipped with wash and rinse vat, utensil rack, milk cooling facilities and have an adequate supply of hot water available for cleaning milking equipment.

68.22(3) *Utensils and equipment.* Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and

drained after each milking, stored in suitable facilities, and sanitized immediately before use with at least 200 ppm. chlorine solution or its equivalent.

68.22(4) *Cooling.* Milk in farm bulk tanks shall be cooled to 45° F or 7° C or lower within two hours after milking and maintained at 50° F or 10° C or lower until transferred to the transport tank. Milk in cans shall be cooled immediately after milking to 50° F or 10° C or lower unless delivered to the plant within two hours after milking. The temperature requirement for milk placed in cans will be 50° F or 10° C or lower. The cooler, tank, or refrigerated unit shall be kept clean.

This rule is intended to implement Iowa Code chapter 192 and section 192A.28.

21—68.23 to **68.25** Reserved.

21—68.26(190,192,194) Tests for abnormal milk.

68.26(1) At least once every calendar month, all creameries, cheese factories, or milk processing plants, hereafter referred to as purchasers, shall test a herd milk sample from every producer in a certified or officially designated laboratory to determine the existence of abnormal milk.

68.26(2) A herd milk sample shall be deemed to be abnormal or adulterated if a test by direct microscopic examination, electronic somatic cell count, or equivalent technique, reveals a count greater than 750,000 somatic cells/ml.

68.26(3) Whenever two of the last four consecutive somatic cell counts exceed 750,000 cells/ml, the purchaser or regulatory authority shall send a written notice thereof to the person concerned. An additional sample shall be taken within 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit shall be instituted whenever the standard is violated by three of the last five somatic cell counts.

68.26(4) Within one week following receipt of a written application from the producer, an inspection shall be made by the regulatory authority or the purchaser and a herd milk sample taken. If the test indicates a count of 750,000 or less somatic cells/ml, the producer's milk may be purchased for human consumption provided additional samples of herd milk are tested at a rate of not more than two per week. The producer shall be reinstated under the normal testing program when three out of four consecutive tests have counts of 750,000 or less somatic cells/ml.

This rule is intended to implement Iowa Code chapter 192 and Iowa Code sections 190.4, 194.4, and 194.6.

21—68.27(192,194) Standards for performing farm inspections. The October 1, 2009, manual prepared by USDA/AMS, Dairy Division, titled "General Instructions for Performing Farm Inspections According to USDA Recommended Requirements for Manufacturing Purposes and Its Production and Processing for Adoption by State Regulatory Agencies," is adopted in its entirety and shall constitute the official standards for farms producing milk for manufacturing, with the following exception:

Strike from Rule 1c, Brucellosis Test, the words "Uniform Methods and Rules for establishing and maintaining Certified Brucellosis Free Herds of Cattle, Modified Certified Brucellosis Area and Certified Brucellosis Free Areas which are approved by Animal Disease Eradication Division, Agricultural Research Service...", and insert in lieu thereof, "Brucellosis Eradication, Uniform Methods and Rules, effective February 1, 1998". The bacteriological standards for private water supplies used by dairy farms consist of an MPN (Most Probable Number of Coliform Organisms) of less than 2.2/100 ml by the multiple tube fermentation technique, or less than 1/100 ml by the membrane filter technique, or the results of any water test approved by the United States Food and Drug Administration or Environmental Protection Agency of less than 1/100 ml.

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

DAIRY FARM WATER

21—68.28 to **68.34** Reserved.

21—68.35(192) Dairy farm water supply.

68.35(1) Water for milk house and milking operations shall be from a supply properly located, protected, and operated and shall be easily accessible, adequate and of a safe, sanitary quality.

68.35(2) A Grade A permit shall not be issued to an applicant when the water well supplying the dairy facility is located in a well pit.

68.35(3) New well construction or the reconstruction of an existing well supplying the dairy facility shall be constructed according to 567—Chapter 49, Iowa Administrative Code.

68.35(4) Frost-free hydrants shall be located at least ten feet from the well that supplies the water for the dairy facility unless a written variance is granted by the department.

68.35(5) The department encourages the use of high-pressure washers for use in the dairy facility. However, they can create a negative pressure and contaminate the water supply system because of their capability to pump at a faster rate than water can be supplied if not properly installed and operated.

The dairy facility water supply system shall be protected from overpumping by a high-pressure washer by one of the following:

1. A separate water supply.
2. By supplying the high-pressure washer from a surge tank that is isolated from the main water supply system by an air gap.
3. A low-pressure cutoff switch.
4. A device built into the high-pressure washer by the manufacturer and approved by the department.
5. Any other device installed in the system to prevent a negative pressure to the supply system that is approved by the department.

This rule is intended to implement Iowa Code chapter 192.

21—68.36(192) Antibiotic testing.

68.36(1) The dairy industry shall screen all Grade A and Grade B farm bulk milk pickup tankers and farm can milk loads for beta lactam drug residues or other residues as designated by the department. A sampling method shall be used with can milk loads to ensure that the sample includes raw milk from every milk can on the vehicle.

68.36(2) When loads are found to contain drugs or other inhibitors at levels exceeding federal Food and Drug Administration established "safety levels," the department's dairy products control bureau shall be notified immediately of the results and of the ultimate disposition of the raw milk. Disposition shall be in a manner approved by the bureau. The producer samples from the violative load shall be tested for tracing the violation back to the violative producer. The primary responsibility for tracing the violation back to the violative producer shall be that of the initial purchaser of the raw milk.

68.36(3) In every antibiotic incident, pickups of milk from the violative individual producer(s) shall be immediately discontinued and the permit shall be suspended until such time that subsequent testing by a certified industry supervisor establishes that the milk does not exceed safe levels of inhibitory residues. In addition, in every antibiotic incident except when the load is negative and the milk can be used, the violative producer shall pay the purchaser for the contaminated load of milk and the producer will not be paid for the producer's share of milk on the load.

68.36(4) The dairy products control bureau staff shall monitor the dairy industry inhibitor load testing activities by making unannounced, on-site inspections to review the load sampling records. The inspector may also collect load samples for testing in the department's dairy laboratory.

68.36(5) For the first violative occurrence within a 12-month period, a department dairy products inspector shall conduct an investigation.

68.36(6) For the second violative occurrence within a 12-month period, a department dairy products inspector shall make an appointment with the producer and a dairy industry representative to meet at the dairy facility within 10 working days of the violative occurrence to inspect the drug storage and to determine the cause of the second violation. In addition, the producer shall review the "Milk and Dairy Beef Residue Prevention Protocol" with a veterinarian within 30 days of the violative occurrence. The protocol certificate shall be signed by the producer and the veterinarian. The producer shall send the

dairy products control bureau a copy of the signed certificate within 35 days of the violation. Failure to complete the course or to submit a copy of the certificate to the dairy products control bureau is grounds for suspension or revocation of a violative producer's permit to sell raw milk.

68.36(7) For the third violative occurrence within a 12-month period, the producer shall attend a hearing concerning the third violation at a time, date, and place set by the department. At the hearing, the producer shall explain the history of the violations and steps taken to prevent a repetition of the violation. At the conclusion of the hearing, the department may order the producer to take additional steps to avoid future repetition of the violation. Failure of the producer to abide by the conditions set by the department is grounds for the department to initiate an action to suspend or revoke the producer's permit to sell raw milk.

68.36(8) In every antibiotic incident of a noncommingled load of milk where there is only one producer on the load, the load shall be discarded and the producer shall pay for the disposition of the load and for the cost of hauling. In addition, the producer and employee(s) shall review the "Milk and Dairy Beef Residue Prevention Protocol" with a veterinarian within 30 days, and the protocol certificate shall be signed by the veterinarian, the producer and the employee(s). The certificate shall be received by the dairy products control bureau within 35 days of the violative occurrence or the permit will be suspended until the certificate is received. For the third violation within a 12-month period, the producer shall be required to attend a hearing in the same manner as specified in subrule 68.36(7).

68.36(9) When the antibiotic tests show that a load is nonviolative, but routine producer sampling finds that a producer on the load is violative, the permit shall be suspended until subsequent testing establishes that the milk does not exceed safe levels of inhibitory residues. The first or second monetary penalty within a 12-month period shall be waived. In case of a third violation within a 12-month period, procedures shall be initiated as provided in subrule 68.36(7).

68.36(10) Each violative occurrence within a 12-month period, including a violative producer found on a nonviolative load, shall count as a first, second, third or fourth violation against the producer.

68.36(11) Records shall be kept by the industry at each receiving or transfer station of all incoming farm pickup loads of raw milk. The records shall be retained for a period of at least 12 months.

a. The records shall include the following information:

(1) Name of the organization;
(2) Name of test(s) used;
(3) Controls, positive and negative;
(4) Date of test(s);
(5) Time the test was performed;
(6) Temperature of the milk in the tanker at the time of sampling;
(7) Identification of the load;
(8) Pounds of milk on the load;
(9) Initials of the person filling out the record.

b. When the load is violative, the records shall also include the following:

(1) Names of the producers on the load;
(2) Identification of the violative producer(s);
(3) The first name of the dairy products control bureau office person telephoned;
(4) Location of disposition of the violative load;
(5) The number of pounds of milk belonging to each producer.

68.36(12) When telephoning the dairy products control bureau office to report a violative load or violative producer, the following information shall be given:

a. Name of the person telephoning;
b. Name of the organization;
c. Date of violation;
d. Route number and name of the milk hauler;
e. Verification that all producers on the violative load were tested;
f. Name and producer number(s) of the violative producer(s) and milk grade;
g. The concentration of residue in the producer sample;

h. The concentration of residue in the load sample, if available;
i. Name of test(s) used;
j. Name of analyst;
k. Pounds of milk on the load and violative producer(s) pounds;
l. Location of disposition of the milk.

This rule is intended to implement Iowa Code chapter 192.

21—68.37(192,194) Milk truck approaches.

68.37(1) The milk truck approach of a dairy farm facility shall not be through a cowyard or any other animal confinement area.

68.37(2) If the milk truck approach is contaminated with manure, the milk truck shall not traverse through the contaminated area.

68.37(3) All milk truck approach driveways shall be graded, maintained in a smooth condition, and shall be topped with gravel or be paved.

This rule is intended to implement Iowa Code chapters 192 and 194.

[**ARC 8699B**, IAB 4/21/10, effective 5/26/10]

21—68.38 and **68.39** Reserved.

MILK TANKER, MILK HAULER, MILK GRADER, CAN MILK TRUCK BODY

21—68.40(192) Definitions.

"Bulk milk tanker" means a mobile bulk container used to transport milk or fluid milk products from farm to plant or from plant to plant. This includes both the over-the-road semitankers and the tankers that are permanently mounted on a motor vehicle.

"Bulk tank" means a bulk tank used to cool and store milk on a farm.

"Can milk truck body" means a truck body permanently mounted on a motor vehicle for the purpose of picking up milk in milk cans from dairy farms for delivery to a milk plant.

"Dairy farm" means any place where one or more cows, sheep or goats are kept for the production of milk.

"Milk" means the lacteal secretion of cows, sheep or goats, and includes dairy products.

"Milk can" means a sanitary-designed, seamless, stainless steel can, manufactured from approved material for the purpose of storing raw milk on can milk farms, to be picked up and loaded onto a can milk truck body.

"Milk grader" means a person who collects a milk sample from a bulk tank or a bulk milk tanker. This includes dairy industry field personnel and dairy industry milk intake personnel.

"Milk hauler" means any person who collects milk at a dairy farm for delivery to a milk plant.

"Milk plant" means any facility where milk is processed, received or transferred.

"Milk producer" means any person who owns or operates a dairy farm.

21—68.41(192) Bulk milk tanker license required.

68.41(1) A milk tanker shall not operate in Iowa without a valid license.

68.41(2) The license application shall include a description of the bulk milk tanker, including the make, serial number, capacity and the address at which the bulk milk tanker is customarily kept when not being used. The applicant shall also furnish any other information which the department reasonably requires for identification and licensing.

68.41(3) A license pursuant to this rule expires June 30 annually and is not transferable between tankers.

68.41(4) The department may initiate an enforcement action against a person operating a bulk milk tanker if the department determines that the person has operated without a license or has procured another person to operate without a license.

68.41(5) The cost of the bulk milk tanker license is $25 per year.

68.41(6) If the bulk milk tanker and accessories have been inspected within the last 12 months and carry a current license, the bulk milk tanker renewal license application and a return envelope will be mailed to the owner of the tanker in April annually by the dairy products control bureau office in Des Moines.

21—68.42(192) Bulk milk tanker construction. A bulk milk tanker, including equipment and accessories, shall be of a sanitary design and construction and shall comply with "3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Products Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service," Number B-05-15-A (April 14, 2015), published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc. and the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services.
[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.43(192) Bulk milk tanker cleaning and maintenance.

68.43(1) A bulk milk tanker, including equipment and accessories, shall be thoroughly cleaned immediately after each day's use and shall be kept clean and in good repair.

68.43(2) All product contact surfaces on a bulk milk tanker, including all contact product surfaces of equipment and accessories used on the tanker, shall be thoroughly cleaned.

68.43(3) External surfaces of a bulk milk tanker shall also be thoroughly cleaned.

21—68.44(192) Bulk tanker sanitization. All product contact surfaces on a bulk milk tanker, including equipment and accessories, shall be thoroughly sanitized immediately after cleaning.

21—68.45(192) Bulk milk tanker cleaning facility.

68.45(1) A bulk milk tanker shall be cleaned and sanitized in a fully enclosed facility.

68.45(2) The facility shall have an impervious drained floor and shall be equipped with adequate hot and cold water under pressure, a wash vat, sanitizing facilities and equipment storage racks.

68.45(3) A bulk milk tanker may be cleaned and sanitized in the same room where milk is being received from bulk milk tankers.

21—68.46(192) Bulk milk tanker cleaning tag.

68.46(1) When a bulk milk tanker has been thoroughly cleaned and sanitized, but is not returning to the same plant, the dairy receiving operator shall attach a tag showing all of the following:

a. The date on which the tanker was cleaned and sanitized.

b. The name and location of the facility where the tanker was cleaned and sanitized.

c. The legible signature or initials of the person who cleaned and sanitized the tanker.

d. The type or name of the chemicals used to clean and sanitize.

68.46(2) The tag shall be attached to the outlet valve or inside the pump cabinet of the tanker.

68.46(3) The tag shall not be removed until the tanker is cleaned and sanitized again.

68.46(4) All unused tags shall be maintained in a secure location so they cannot be easily used for unauthorized purposes.

21—68.47(192) Dairy plant, receiving station or transfer station records.

68.47(1) Records shall be kept at all plants where tankers are cleaned and sanitized.

68.47(2) The records shall be kept for at least 90 days.

68.47(3) The records shall include all of the following:

a. The name and address of the facility where the tanker was cleaned and sanitized.

b. The date on which the tanker was cleaned and sanitized.

c. The legible name or initials of the person who cleaned and sanitized the tanker.

21—68.48(192) Milk hauler license required.

68.48(1) A person shall not engage in the activities of being a milk hauler without a valid milk hauler license.

68.48(2) The cost of a milk hauler license is $10.

68.48(3) A milk hauler license obtained pursuant to this rule expires June 30 annually and is not transferable between persons.

68.48(4) As a condition of relicensing, a milk hauler license renewal applicant shall have had an on-the-farm evaluation of milk pickup procedures by a department inspector within two years immediately prior to relicensure and shall have attended a milk hauler school within three years immediately prior if a hauler school was made available within that three-year period.

68.48(5) If a milk hauler with a current license has had an on-the-farm evaluation within the last two years and has attended a state milk hauler training school within the last three years, a milk hauler renewal application and a return envelope will be mailed to the milk hauler in April annually by the dairy products control bureau office in Des Moines.

68.48(6) The department may take action against a person if the department determines that the person has engaged in activities requiring a milk hauler license without a valid milk hauler license or has procured another person to operate without a license.

21—68.49(192) New milk hauler license applicant.

68.49(1) The department may issue a 45-day interim license to a new applicant for a milk hauler license if the department determines that the new applicant has been trained by an industry field person who holds a milk hauler license.

68.49(2) An application for an interim license may be made by calling the dairy products control bureau office in Des Moines at (515)281-3545 and requesting the interim license and the Milk Hauler's Manual. The applicant shall give the name of the person who has provided the training and the telephone number where that person can be reached for verification. The license may be issued after verification of the training and verification of the trainer's license.

68.49(3) The cost of the interim license is $10 and will be used for the payment of the regular milk hauler license upon approval by the department.

68.49(4) An application form for the regular milk hauler license will be sent with the interim license. During the 45-day interim period, in order to receive a regular milk hauler license, the applicant shall do both of the following:

a. Pass a written examination based upon the Milk Hauler's Manual, given by a department inspector.

b. Pass a written, on-the-farm evaluation of milk pickup procedures by a department inspector on a "Bulk Milk Pickup Tanker, Hauler Report and Sampler Evaluation Form" that was filled out by the department inspector at the time of the evaluation. This form shall be sent to the Des Moines office with the completed application and the $10 license fee (if the fee has not been paid).

68.49(5) The department shall grant or deny a license application within the 45-day interim period.

68.49(6) The department shall not issue a milk hauler license if court action is in progress against the applicant for operating without an interim or regular license.

21—68.50(192) Supplies required for milk collection and sampling. A milk hauler who collects milk in bulk from a dairy farm shall have all of the following supplies available:

1. An adequate supply of sample containers.
2. A sample dipper.
3. A sample dipper storage container.
4. A sanitizing solution in the sample dipper storage container of 200 ppm of chlorine or equivalent.
5. An insulated carrying case with a rack to hold samples.
6. A certified thermometer, accurate to plus or minus 2°F, that can be used to check the temperature of the milk in the farm bulk tank, the accuracy of the farm bulk tank thermometers and the temperature of the commingled load.
7. A marking device to identify samples collected.
8. A watch or timing device.

9. An adequate supply of forms needed for milk collection and records.
10. A writing device to write on the forms and records.
11. Access to an adequate supply of single-service paper towels.

21—68.51(192) Milk hauler sanitization.

1. A milk hauler shall wear clean clothing.
2. A milk hauler shall maintain a high degree of personal cleanliness.
3. A milk hauler shall observe good hygienic practices.
4. A milk hauler shall not measure, sample or collect milk if the hauler has a discharging or infected wound or lesion on the hauler's hands or exposed arms.

21—68.52(192) Examining milk by sight and smell.

68.52(1) Before a milk hauler receives or collects milk from a dairy farm, the hauler shall examine the milk by sight and smell and shall reject all milk that has any of the following characteristics:

1. Objectionable odor.
2. Abnormal appearance and consistency.
3. Visible adulteration.

68.52(2) A milk hauler who rejects milk from a farm shall collect only a sample of the rejected milk.

68.52(3) If a dairy farmer disputes a milk hauler's rejection of the milk, the milk hauler shall contact the operator of the dairy plant to which the milk would ordinarily be delivered, and the plant operator or the plant field person shall examine the rejected milk to determine whether the milk was properly rejected.

21—68.53(192) Milk hauler hand washing. A milk hauler shall wash and dry hands before performing any of the following:

1. Using a thermometer.
2. Measuring the milk.
3. Collecting a milk sample.

21—68.54(192) Milk temperature.

68.54(1) Before a milk hauler collects milk at a dairy farm, the milk hauler shall record the temperature of the milk to be collected.

68.54(2) If the milk is collected more than two hours after the last milking, the milk hauler shall reject the milk if the milk temperature exceeds 45°F or 7°C.

68.54(3) If milk from two or more milkings is collected within two hours of the last milking, the milk hauler shall reject the milk if the milk temperature exceeds 50°F or 10°C.

68.54(4) If the farm bulk tank thermometer is working, at least once each month, and more often if necessary, a milk hauler shall check the accuracy of each dairy farm bulk tank thermometer by taking the temperature of the milk in the bulk tank with the milk hauler's thermometer and shall record the temperature on the milk pickup record card. This procedure shall be done at every pickup if the farm bulk tank thermometer is not working.

68.54(5) Before a milk hauler uses the milk hauler's thermometer to take the temperature of the milk in a bulk tank, the hauler shall sanitize the stem of the thermometer in 200 ppm chlorine or its equivalent for a minimum of 60 seconds.

68.54(6) A milk hauler shall immediately notify the milk producer and the dairy field person if the dairy farm bulk tank is not cooling properly or if the bulk tank thermometer is not recording the temperatures accurately.

21—68.55(192) Connecting the milk hose.

68.55(1) Before the milk hauler connects a tanker hose to a bulk tank, the hauler shall examine the fittings of the tanker hose and the bulk tank outlet and shall clean and sanitize as necessary.

68.55(2) The milk hauler shall attach the milk hose to the bulk tank outlet in a manner that does not contaminate the hose or the hose cap.

68.55(3) The hose shall be connected through the milk room hose port.

21—68.56(192) Measuring the milk in the bulk tank.

68.56(1) Before milk is transferred from a bulk tank to a bulk milk tanker, the milk hauler shall measure the amount of milk in the bulk tank.

68.56(2) The milk hauler shall measure the milk using a clean gauge rod or other measuring device that is specifically designed and calibrated to measure milk in the bulk tank.

68.56(3) Immediately before using the gauge rod or measuring device, the milk hauler shall wipe it dry with a clean, single-service disposable towel.

68.56(4) A milk hauler shall not measure the amount of milk in a dairy farm bulk tank until the milk in the tank is motionless.

68.56(5) If the milk is being agitated, the milk hauler shall turn off the agitator and wait for the milk to become completely motionless before measuring the milk.

68.56(6) After measuring the milk with a gauge rod or other device, the milk hauler shall use that measurement to calculate the weight or volume of milk in the bulk tank with the manufacturer's conversion chart.

68.56(7) The milk hauler shall record that weight or volume on a written collection record.

21—68.57(192) Milk sample for testing.

68.57(1) Before milk is transferred from a dairy farm bulk tank to a bulk milk tanker, a milk hauler shall collect a representative sample of that milk from the dairy farm bulk tank for testing. If there is more than one bulk tank, a sample from each tank shall be taken and identified.

68.57(2) The collected sample shall be filled only ¾ full in the sample container so that the sample can be agitated in the lab.

21—68.58(192) Milk collection record.

68.58(1) Whenever a milk hauler collects a milk shipment from a dairy farm, the milk hauler shall make a written record for that shipment.

68.58(2) One copy of the collection record shall be posted in a dairy farm milk room.

68.58(3) The collection record shall be initialed by the milk hauler.

68.58(4) The record shall include all of the following:

1. The milk producer identification number.
2. The milk hauler's initials.
3. The date when the milk was sampled and collected.
4. The temperature of the milk when collected.
5. The weight or volume of milk collected as determined by the milk hauler.
6. The time of pickup, including whether A.M. or P.M. or military time.

21—68.59(192) Loading the milk from the bulk tank to the milk tanker.

68.59(1) After a milk hauler has sampled milk from the dairy farm bulk tank and prepared a complete collection record, the hauler may transfer the milk from that bulk tank to the milk tanker.

68.59(2) A milk hauler shall not collect milk from any other container on a dairy farm other than from a bulk tank.

68.59(3) Partial pickup of milk shall be avoided whenever possible.

68.59(4) After a milk hauler has collected all of the milk from a bulk tank, the milk hauler shall disconnect the milk hose from the bulk tank, cap the hose and return the hose to its cabinet in the bulk milk tanker.

68.59(5) The milk hauler shall inspect the empty dairy farm bulk tank for abnormal sediments and shall report any abnormal sediments to the dairy producer and the dairy plant field person.

68.59(6) After the milk hauler has disconnected the milk hose and inspected the empty farm bulk tank for abnormal sediments, the milk hauler shall rinse the bulk tank with cold or lukewarm water.

21—68.60(192) Milk samples required for testing.

68.60(1) The milk hauler shall collect a sample of milk from each dairy farm bulk tank before that milk is transferred to a bulk milk tanker.

68.60(2) A milk sample collected from a dairy farm bulk tank shall not be commingled with a sample collected from any other bulk tank.

21—68.61(192) Bulk milk sampling procedures. A milk hauler shall comply with all of the following procedures when collecting a milk sample:

1. Shall collect the sample after the bulk tank milk has been thoroughly agitated.
2. Shall agitate a bulk tank of less than a 1000 gallon size, in the presence of the milk hauler, for at least five minutes before the milk sample is taken.
3. Shall agitate a bulk tank of a 1000 gallon size or larger, in the presence of the milk hauler, for at least ten minutes before the milk sample is taken. If there are stamped printed instructions on the bulk tank, giving explicit agitation instructions that are different from ten minutes, the bulk tank shall then be agitated according to the written instructions.
4. Shall collect the sample using a sanitized sample dipper that is manufactured for the purpose of taking a milk sample from a bulk tank. The milk hauler shall not use the sample container to collect a milk sample.
5. Shall rinse the sanitized sample dipper in the milk, in the bulk tank, at least two times before the dipper is used to collect the sample.
6. After rinsing the sample dipper in the milk, shall pour the sample from the dipper into a sample container until the sample container is ¾ full and shall securely close the sample container.
7. Shall not fill the sample container over the bulk tank, but shall fill the sample container off to the side of the bulk tank, over the floor of the milk room.
8. Shall handle the sample container and cap aseptically.
9. After collecting the milk sample, shall immediately place the sample on a rack or floater, on ice in the insulated sample container, and rinse the sample dipper with clean potable water.

21—68.62(192) Temperature control sample.

68.62(1) The milk hauler shall collect two milk samples at the first farm on each milk route.

68.62(2) One of the two samples collected from the first farm shall be used for a temperature control (TC) sample.

68.62(3) The temperature control (TC) sample shall remain in the rack with the other samples pertaining to that load.

68.62(4) The temperature control (TC) sample container shall be marked in a legible manner identifying the sample as the TC sample and shall also be marked with the other following information:

1. The producer identification number.
2. The initials of the milk hauler.
3. The date the sample was collected.
4. The time the sample was collected.
5. The temperature of the milk in the farm bulk tank from which the TC sample was collected.

21—68.63(192) Producer sample identification. Immediately before a milk hauler collects a milk sample, but before the milk hauler opens the sample container, the milk hauler shall, unless that sample container is prelabeled with the producer information, clearly and indelibly label the sample container with all of the following information:

1. The producer identification number.
2. The date when the sample was collected.
3. The temperature of the milk in the bulk tank.

21—68.64(192) Care and delivery of producer milk samples.

68.64(1) Immediately after a milk hauler collects a milk sample, the milk hauler shall place the sample container in a clean, refrigerated carrying case in which the temperature is kept at from 32°F to 40°F.

68.64(2) If the sample containers are packed in ice or cold water to keep the samples refrigerated, the ice or water shall cover no more than ¾ of each sample container.

68.64(3) The milk hauler shall promptly deliver the samples to the place designated by the milk purchaser.

21—68.65(192) Milk sample carrying case. The carrying case shall be constructed to have all of the following characteristics:

1. Shall be constructed of rigid metal or plastic.
2. Shall be effectively insulated and refrigerated to keep the samples at the required temperature.
3. Shall have a rack or floater designed to hold samples in the upright position.

21—68.66(192) Bulk milk delivery.

68.66(1) If milk is unloaded or transferred at any location other than a licensed facility, the person having custody of the milk shall notify the department of that unloading or transfer before that milk is processed or shipped to any other location.

68.66(2) Air entering a bulk milk tanker when the tanker is unloading shall be filtered to prevent contamination of the milk when the door to the receiving area is open.

21—68.67(192) False samples or records. The department may take enforcement action against a person doing or conspiring to do any of the following:

1. Falsely identify any milk sample.
2. Submit a false or manipulated milk sample.
3. Submit a milk sample collected in violation of this chapter.
4. Misrepresent the amount of milk collected from a dairy farm.
5. Misrepresent or falsify any record or report required under this chapter.

21—68.68(192) Violations prompting immediate suspension. A person violating any of the following shall have the person's milk hauler license suspended for the first full five weekdays following the violation. Administering the violation in this manner will allow a licensed field representative or a person employed by the plant with a milk hauler's license to ride with a suspended milk hauler and to perform all of the bulk milk pickup procedures which the suspended milk hauler shall not perform while the license is suspended. This rule will also allow a dairy co-op or a proprietary establishment the ability to recover the cost of the employee of the business establishment while the employee is working with the suspended milk hauler.

1. Not measuring the milk before pumping.
2. Not collecting a sample from the farm bulk tank.
3. Collecting milk from a container other than the farm bulk tank or an approved milk can.
4. Not collecting a milk sample before pumping or opening the valve to the milk tanker.
5. Mixing the contents of milk samples with other milk samples.
6. Collecting a sample before proper agitation.
7. Not using proper sample collection equipment.
8. Falsely identifying a milk sample.
9. Submitting a false or manipulated milk sample or a false sample collection record.

21—68.69(192) Milk grader license required.

68.69(1) A person shall not be employed as a dairy field person or a milk intake person and shall not collect a raw milk sample from a farm bulk tank or collect a load sample from a bulk milk tanker in Iowa without first being evaluated by a department dairy inspector and making application for a milk

grader license. A milk grader license will not be needed by a temporary milk plant intake person that is under the direct supervision of a licensed milk grader.

68.69(2) The department may take an enforcement action against a person engaged in activities of a dairy field person or milk intake person or a person collecting milk samples from a farm bulk tank or from a bulk milk tanker if the department determines that the applicant has engaged in such activities without first obtaining a valid Iowa milk grader license or a valid 45-day interim license or has procured another person to operate without a license.

68.69(3) The cost of a milk grader license is $10.

68.69(4) A milk grader license obtained pursuant to this rule expires June 30 annually and is not transferable between persons.

68.69(5) As a condition of relicensing:

a. A milk grader license renewal applicant for collecting a milk sample from a farm bulk tank shall have had an on-the-farm evaluation of milk collecting and care of milk sample procedures by a department inspector within two years immediately prior to relicensure and shall have attended a milk hauler school within three years immediately prior to relicensure, if a hauler school was made available within that three-year period.

b. A milk grader license renewal applicant for collecting a milk sample from a bulk milk tanker at a milk plant shall have had an in-the-plant evaluation of milk collecting procedures by a department inspector within the last two years prior to relicensure.

c. If the milk grader has had an evaluation within the last two years and, if required, has attended a milk hauler training school within the last three years, a milk grader renewal application and a return envelope will be mailed annually in April to the milk grader by the dairy products control bureau office in Des Moines.

21—68.70(192) New milk grader license applicant.

68.70(1) Rescinded IAB 8/19/15, effective 9/23/15.

68.70(2) An applicant for a milk grader license to collect a milk sample from a farm bulk tank shall follow the procedures outlined in subrules 68.49(2) to 68.49(4).

68.70(3) An applicant for a milk grader license to collect a milk sample from a bulk milk tanker at a milk plant shall contact the dairy products control bureau office in Des Moines, telephone (515)281-3545, and request a sampling procedure review by a department inspector and a milk grader application.

The inspector will fill out "Inspection Form Short Form 009-0293/TS" for verification of the sampling procedure review and give a signed copy to the applicant. The applicant shall mail the signed copy, the completed application and the $10 license fee to the dairy products control bureau office for a "Restricted Milk Grader License."

[**ARC 2104C**, IAB 8/19/15, effective 9/23/15]

21—68.71(192,194) Can milk truck body.

68.71(1) A can milk truck body used for the purpose of picking up milk in milk cans from dairy farms for delivery to a milk plant shall not operate in the state of Iowa without first being issued a valid license from the department. This rule is intended to include can milk truck bodies that are commercially licensed in Iowa.

68.71(2) The can milk truck body vehicle license applicant shall include a description of the body, the make, model, year and color of the truck, a description of the can milk truck body, including the make, serial number, can capacity and the address at which the can milk truck body is customarily kept when not being used. The applicant shall also furnish any other information which the department reasonably requires for identification and licensing.

68.71(3) A license pursuant to this rule expires June 30 annually and is not transferable between truck bodies.

68.71(4) The department may take enforcement action against a person operating a can milk truck body if the department determines that the person has operated without a license or a person has procured another person to operate without a license.

68.71(5) The cost of the can milk truck body license is $25 per year.

68.71(6) The applicant shall have received an annual inspection by a department inspector and shall make the vehicle available for inspection prior to receiving the license.

These rules are intended to implement Iowa Code chapter 192.

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CHAPTER 92
PARTICIPATION IN GRAIN INDEMNITY FUND

[Prior to 7/30/86, Commerce Commission (250), Ch l4]
[Prior to 7/27/88, 21—Ch 62]

21—92.1(203D) Mandatory participation in fund. All grain dealers and warehouse operators shall participate in the grain depositors and sellers indemnity fund (the fund) through the remission of the fees required in rule 21—92.2(203D). Failure to participate shall result in license suspension or revocation. As used in this chapter, "grain dealer" shall mean a licensed grain dealer pursuant to Iowa Code section 203.3 and "warehouse operator" shall mean a licensed warehouse operator pursuant to Iowa Code section 203C.6. "Licensee" shall mean either a licensed grain dealer or a licensed warehouse operator.
[**ARC 9388B**, IAB 2/23/11, effective 3/30/11]

21—92.2(203D) Required fees. Until the amounts are amended or waived by the grain indemnity fund board pursuant to Iowa Code section 203D.5, in accordance with Iowa Code chapter 17A, fees shall be assessed as follows:

92.2(1) A per-bushel fee on all purchased grain, in an amount of one-quarter cent per bushel, remitted by grain dealers. However, if the grain dealer provides documentation satisfactory to the department, the following transactions shall be excluded from the per-bushel fee:

a. Grain purchased from the United States government or any of its subdivisions or agencies.

b. Grain purchased from a person licensed as a grain dealer in any jurisdiction.

c. Grain purchased under a credit-sale contract.

d. Grain entered in the company-owned paid position as a cancellation of a collateral warehouse receipt.

e. Grain entered in the company-owned paid position as an intracompany location transfer.

92.2(2) An annual participation fee, remitted by licensees, as follows:

a. For grain dealers, a participation fee of fourteen thousandths of a cent per bushel on all purchased grain entered into the company-owned paid position during the grain dealer's last fiscal year. However, a grain dealer shall pay a minimum participation fee of $50. If the grain dealer provides documentation satisfactory to the department, the following transactions shall be excluded from the participation fee:

(1) Grain purchased from the United States government or any of its subdivisions or agencies.

(2) Grain purchased from a person licensed as a grain dealer in any jurisdiction.

(3) Grain purchased under a credit-sale contract.

(4) Grain entered in the company-owned paid position as a cancellation of a collateral warehouse receipt.

(5) Grain entered in the company-owned paid position as an intracompany location transfer.

b. For warehouse operators, a participation fee of fourteen thousandths of a cent per bushel of bulk grain storage capacity, or $500, whichever is less. However, a warehouse operator shall pay a minimum participation fee of $50.

92.2(3) A grain dealer may pass on the cost of a per-bushel fee paid in accordance with 92.2(1) to the grain sellers by an itemized discount on the grain dealer's settlement sheet.

This rule is intended to implement Iowa Code sections 203D.3, 203D.3A and 203D.5.
[**ARC 9388B**, IAB 2/23/11, effective 3/30/11; **ARC 2105C**, IAB 8/19/15, effective 9/23/15]

21—92.3(203D) New license applicants. Persons applying for a new grain dealer license or warehouse operator license shall pay a full annual participation fee in accordance with Iowa Code sections 203D.3A and 203D.5. This payment shall be made without regard to whether or not the grain indemnity fund board has otherwise waived or adjusted the per-bushel or participation fees for licenses. Payment of the fees shall be made before a new license is issued. A participation fee paid by an applicant shall be refunded if the license is not issued by the department. A participation fee paid by a grain dealer applicant shall be recalculated by the end of the first state fiscal quarter after completion of the grain dealer's first year of operation. The grain dealer participation fee shall be recalculated based upon all actual

purchased grain entered into the company-owned paid position in the dealer's first year of operation. However, redemptions of collateral warehouse receipts entered in the company-owned paid position shall not be considered as a purchase. Underpayments shall be paid by the licensee in accordance with rule 21—92.4(203D), and overpayments shall be refunded by the department.

This rule is intended to implement Iowa Code sections 203D.3A and 203D.5.

[**ARC 9388B**, IAB 2/23/11, effective 3/30/11]

21—92.4(203D) Due date for payment of the per-bushel and participation fees.

92.4(1) *Quarterly payments.* The per-bushel fee and the participation fee installment payment established in Iowa Code section 203D.3A, as adjusted by rule 21—92.2(203D), and the quarterly report are due, except as provided in subrule 92.4(2), on the fifteenth day of the fiscal month succeeding the fiscal quarter in which the fee accrued. The fiscal quarters are as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.

92.4(2) *Payments for licensees out of business.* If a grain dealer or warehouse operator license has expired or is revoked or canceled during the term of a fiscal quarter, the quarterly report and per-bushel fee for that quarter are due 15 days after the date of license expiration, revocation, or cancellation.

92.4(3) *Holidays.* If the due date determined under subrules 92.4(1) and 92.4(2) falls on a Saturday, Sunday, a legal holiday as provided in Iowa Code section 4.1(34), or a Monday following a Sunday which is a named legal holiday, the due date is the following day.

92.4(4) *Forms and payment.* The quarterly report shall be submitted on forms or in a format prescribed by the bureau. Required forms shall be provided by the grain warehouse bureau. The amount of the per-bushel fee, as calculated in the quarterly report, shall accompany the report. Checks shall be made payable to the Iowa Department of Agriculture and Land Stewardship (abbreviated as IDALS).

92.4(5) *"Receiving" defined.* The quarterly report and the per-bushel fee must be received on or by the due date to avoid penalty. For the purpose of this chapter, "received" means the earliest of the following:

a. The date a state warehouse examiner acknowledges receipt;

b. The date on which the report is stamped "received" in the warehouse bureau; or

c. The date on which the report is postmarked, if the item is properly addressed to the Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 203D.3 and 203D.3A.

[**ARC 9388B**, IAB 2/23/11, effective 3/30/11]

21—92.5(203D) Penalty for delinquent submission of per-bushel and participation fees.

92.5(1) *Delinquent payments defined.* In regard to the submission of the quarterly report, per-bushel fee and the participation fee installment payment, the licensee is deemed to be delinquent if any of the following apply:

a. The quarterly report and payment of the per-bushel fee due are not received on or before the due date.

b. The quarterly report and partial payment of the per-bushel fee due are received on or before the due date, but the underpayment exceeds the margin of error, which for this rule is the greater of $10 or 10 percent of the per-bushel fee due as determined by the warehouse bureau.

c. The quarterly report and partial payment of the per-bushel fee due are received on or before the due date, and the underpayment is within the margin of error provided, but the amount of the underpayment has not been received on or before the tenth day after the licensee is notified of the underpayment.

d. The participation fee installment payment is not received on or before the due date.

92.5(2) *Penalty amount.* The amount of penalty for a delinquent submission is the lesser of the amount of the deficiency or $10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license has expired or has been revoked or canceled. However, a delinquent payment is subject to a minimum penalty amount of $10.

92.5(3) *Penalty when no assessment is due.* If the licensee is delinquent because the quarterly report is not received until after the due date, but no per-bushel fee was due for that quarter, there is a one-day penalty of $10.

92.5(4) *License suspension and revocation for failure to pay.* If the delinquency is not cured within 30 days after the due date, the grain dealer's or warehouse operator's license shall be suspended. If the delinquency is not cured within 30 days after suspension, the license shall be revoked.

92.5(5) *Overpayments.* If, upon review of the quarterly report, the grain warehouse bureau determines that there has been an overpayment of $1 or more, the bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than $1 are negated.

This rule is intended to implement Iowa Code sections 203D.3 and 203D.3A.

[**ARC 9388B**, IAB 2/23/11, effective 3/30/11]

21—92.6(203D) Penalty for delinquent payment of per-bushel fee discovered during examination.

92.6(1) *Delinquent payments defined.* In regard to an underpayment discovered during the performance of an examination, the licensee is deemed to be delinquent if any of the following apply:

a. The underpayment for any quarter exceeds the margin of error, which for this rule is the greater of $100 or 50 percent of the per-bushel fee due for the quarter in question, as determined by the grain warehouse bureau.

b. The underpayment is within the margin of error provided, but the amount of the underpayment has not been received on or before the fifth day after the licensee is notified of the underpayment in the examiner's written report.

92.6(2) *Negated amounts.* Underpayments of less than $1 are negated and do not constitute delinquency.

92.6(3) *Penalty amount.* If the licensee is delinquent, the penalty is the lesser of the amount of the deficiency or $10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license has expired or has been revoked or canceled. However, a delinquent payment is subject to a minimum penalty amount of $10.

92.6(4) *License suspension and revocation for failure to pay.* If the underpayment is not received within 30 days after the date of the examiner's report, the grain dealer's or warehouse operator's license shall be suspended. If the underpayment is not received within 30 days after suspension, the license shall be revoked.

92.6(5) *Overpayments.* If, during the performance of any examination, the warehouse bureau determines that there has been an overpayment of $1 or more, the warehouse bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than $1 are negated.

This rule is intended to implement Iowa Code sections 203D.3 and 203D.3A.

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CHAPTER 37
IOWA STATE INDUSTRIES

[Prior to 10/1/83, Social Services[770] Ch 23]
[Prior to 3/20/91, Corrections Department[291]]

201—37.1(904) Mission and function. Iowa state industries, which is established by Iowa Code chapter 904, consists of a policy board, a director, and manufacturing, farming, surplus and private sector work programs. Each business is entirely self-funded and receives no state appropriation.

37.1(1) The mission of Iowa state industries is to employ staff and offenders who are dedicated to providing exceptional service, reasonable prices and quality products.

37.1(2) Iowa state industries is charged with making available to offenders of the state correctional institutions opportunities for work in meaningful jobs that will ensure the offenders' chances of a successful return to society as law-abiding and self-supporting members of the community upon the offenders' release. Iowa state industries is further charged with enabling offenders to work in order to provide financial assistance to their dependents, make restitution, pay the cost of board and maintenance in a correctional institution, and accumulate savings upon their eventual return to the community.

201—37.2(904) Sale of products.

37.2(1) Iowa state industries shall sell products to any tax-supported institution or governmental subdivision in any level of government, including state, county, city or school. Iowa state industries may sell products to employees of such entities.

37.2(2) Iowa state industries may sell products to nonprofit organizations such as parochial schools, churches, or fraternal organizations and employees of such nonprofit organizations.

37.2(3) Iowa state industries may sell products to nonprofit health care facilities serving Medicaid or social security patients.

37.2(4) Sales will not generally be solicited from the general public. However, the state director of Iowa state industries may determine with the advice of the prison industries advisory board that limited public sales will be made when the sales to political subdivisions are insufficient to justify continued operation of a shop.

This rule is intended to implement Iowa Code section 904.815.

[**ARC 2056C**, IAB 7/8/15, effective 8/12/15; **ARC 2100C**, IAB 8/19/15, effective 8/12/15]

201—37.3(904) Catalogs. Catalogs are available at the following Iowa state industries locations:

1. Main office: Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319;
2. Des Moines sales/surplus: 2323 Dean Avenue, Des Moines, Iowa 50317;
3. Business office: 406 North High Street, Anamosa, Iowa 52205; and
4. Sales offices:

- Anamosa: 406 North High Street, Anamosa, Iowa 52205; and
- Ft. Madison: P.O. Box 316, Avenue E and First Street, Ft. Madison, Iowa 52627.

[**ARC 2100C**, IAB 8/19/15, effective 8/12/15]

201—37.4(904) Offices. The main office for Iowa state industries is located in the Jessie Parker State Office Building, Capitol Complex, Des Moines, Iowa. The mailing address is Iowa State Industries, Jessie Parker State Office Building, 510 East 12th Street, Des Moines, Iowa 50319; telephone (515)725-5785. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

[**ARC 2100C**, IAB 8/19/15, effective 8/12/15]

201—37.5(904) Obtaining information from or reporting information to Iowa state industries. Persons wishing to obtain information from or report information to Iowa state industries may contact the Iowa State Industries Business Office, P.O. Box 430, 406 North High Street, Anamosa, Iowa 52205; telephone (319)462-3504. Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. Information may also be found on the Iowa state industries Web site: http://www.iaprisonind.com.

201—37.6(904) Internet Web site. Iowa State Industries Internet home page is located at http://www.iaprisonind.com.

201—37.7(904) Procurement of goods and services. The provisions of 11—Chapter 105 are hereby adopted by reference with the following amendments.

1. Strike "Department of Administrative Services" and insert in lieu thereof "Iowa State Industries" in all rules except rule 11—105.10(8A), which pertains to procurement of information technology devices and services.

2. In lieu of the definitions of "Department" and "Director," insert the following:

"Department" means the division of Iowa state industries.

"Director" means the director of the division of Iowa state industries or the director's designee.

3. Rules 11—105.6(8A), 11—105.13(8A), and 11—105.15(8A) are not adopted.

4. In lieu of the text of subrule 105.14(1), insert the following: "Purchase of goods. An agency may acquire goods not otherwise available through a master agreement in accordance with the procurement threshold guidelines in 11—105.3(8A)".

5. In lieu of the text of rule 11—105.20(8A), insert the following: "Appeal process. Vendors may appeal actions by Iowa state industries under these rules as follows:

"Step 1. Appeals shall be filed in writing to the Business Manager, Iowa State Industries, 406 North High Street, Anamosa, Iowa 52205, within five working days of notification of the action being appealed.

"Step 2. If the appeal is not resolved, it may be further appealed to the Director of Iowa State Industries, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ten working days of the notification of the Step 1 appeal response.

"Step 3. An unresolved appeal to the Director of Iowa State Industries shall be referred to the Director of the Department of Corrections, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ten working days of the notification of the Step 2 appeal response."

This rule is intended to implement Iowa Code section 904.813.

[**ARC 2100C**, IAB 8/19/15, effective 8/12/15]

201—37.8(904) Prison industries advisory board. The state director of Iowa state industries has, by statute, the advice and counsel of the prison industries advisory board.

37.8(1) Rules of procedure. The seven-member prison industries advisory board is represented by five appointees of the governor, one appointee of the parole board, and one appointee of the director, department of corrections. The principal duties of the advisory board are to promulgate and adopt rules and to advise the director, Iowa state industries, regarding the management of Iowa state industries.

a. A quorum shall consist of five members.

b. When a quorum is present, a position is carried by a majority of the members of the board.

c. The board shall meet at least once per calendar quarter. The meetings will be held at the seat of government unless notification is given otherwise. Other meetings shall be held at the call of the chairperson or of any three members when necessary for the board to discharge its duties.

(1) The communications media shall be notified at least two weeks in advance of board meetings.

(2) When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

d. Copies of the minutes are kept on file in the office of the director, Iowa state industries. Minutes are available from the director's office to interested persons upon request. Organizations may request to be placed on a mailing list. Copies of administrative rules and other materials considered are made a part of the minutes by reference.

e. In cases not covered by these rules, Robert's Rules of Order shall govern.

37.8(2) Meetings. All meetings will be open to the public unless specifically allowed to be closed under Iowa Code chapter 21.

a. Persons wishing to make a presentation shall make such request to the director, Iowa state industries, or to any member of the board at least one week in advance of the scheduled meeting.

b. Persons requesting to make a presentation are requested to submit one written copy of their remarks for the record. Presentations may be made at the discretion of the chairperson and only upon matters appearing on the agenda.

c. Persons who have not made previous arrangements to speak at a meeting may be given the floor at the discretion of the chairperson.

37.8(3) The chairperson may appoint committees of the board as necessary to conduct the business of the board. Committee meetings shall comply with Iowa Code chapter 21.

37.8(4) The board shall:

a. Promulgate and adopt rules.

b. Advise the state director of Iowa state industries regarding the management of Iowa state industries.

This rule is intended to implement Iowa Code section 904.803.

[**ARC 2056C**, IAB 7/8/15, effective 8/12/15; **ARC 2100C**, IAB 8/19/15, effective 8/12/15]

201—37.9(904) Private sector employment projects.

37.9(1) *Definitions.*

"Advisory board" means the prison industries advisory board.

"Deputy director of prison industries" means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

"Director" means the chief executive officer of the department of corrections.

"Workforce development board" means the state workforce development board.

"Workforce development director" means the chief executive officer of the department of workforce development.

37.9(2) *Preapplication requirement.* Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place a job order with a duration of at least 30 days with the nearest workforce development center. The job order will contain the prevailing wage determined by workforce development. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet Web site.

37.9(3) *Employer application.*

a. Private sector employers requesting offender labor must submit the following to the deputy director of prison industries:

(1) Work program, including job description;

(2) Proposed wage rate;

(3) Description of job site;

(4) Duration of the work; and

(5) A copy of the job order listing with workforce development.

b. Upon receiving a written proposal to use offenders in a private sector work program, the deputy director of prison industries shall provide a copy of the private sector work proposal including job descriptions and proposed wages to the workforce development director.

c. The deputy director of prison industries shall send a letter to the department of workforce development requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders.

d. The deputy director of prison industries and the warden/superintendent at the proposed institution shall review the proposed projects with the board of supervisors and the sheriff in the county where the project will be located.

37.9(4) *Verification.* The workforce development director shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the deputy director of prison industries, in writing:

a. Verification of the employer's 30-day job listing;

b. The number of qualified applicant referrals and hires made as a result of the job order;

c. The average wage rate for the proposed job(s);

d. The wage range;

e. The current unemployment rate for the county where the employer is located; and

f. The current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available.

37.9(5) *Prevailing wages.* The deputy director of prison industries shall obtain employment levels in the locale of the proposed job(s) and the prevailing wages for the job(s) in question from the department of workforce development prior to authorizing any private sector work program. The deputy director of prison industries will consider the average wage rate and wage range from the department of workforce development for the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide. To reduce possible displacement of civilian workers, the deputy director of prison industries shall advise prospective employers and eligible offenders of the following requirements:

a. Offenders shall not be eligible for unemployment compensation while incarcerated.

b. Before the employer initiates work utilizing offender labor, the deputy director of prison industries shall provide the baseline number of jobs as established by the department of workforce development.

c. In January and July of each year, the deputy director of prison industries shall receive from the department of workforce development the actual number of civilian workers by employer and shall compile a side-by-side comparison for each employer. A copy of the side-by-side comparison will be provided to the advisory board and workforce development director semiannually.

37.9(6) *Ineligible projects.* The deputy director of prison industries shall evaluate the information from the department of workforce development to verify nondisplacement of civilian workers. Employment of offenders in private industry shall not displace employed workers, apply to skills, crafts, or trades in which there is a local surplus of labor, or impair existing contracts for employment or services.

37.9(7) *Notification and review.*

a. The deputy director of prison industries shall provide a copy of the private sector work proposal and the department of workforce development review of the private sector work proposal to the following:

(1) Governor's office;

(2) Speaker of the house;

(3) President of the senate;

(4) Warden/superintendent at the proposed work site;

(5) Local labor organization(s);

(6) Director of workforce development; and

(7) Department of Justice, Washington, DC.

b. Within 14 calendar days of receiving the department of workforce development review, the deputy director of prison industries will consolidate the recommendations for review and approval by the director of corrections.

37.9(8) *Prison industries advisory board review.*

a. Following approval by the director of corrections, the deputy director of prison industries shall forward the final proposal to the prison industries advisory board with the recommendation to approve or disapprove the work program, including all correspondence from the department of workforce development, the Department of Justice, and any local official who has offered comments.

b. The deputy director of prison industries shall provide written documentation to the prison industries advisory board confirming that the proposed work project will not displace civilian workers. If displacement occurs, the deputy director of prison industries shall advise the private employer that the employer will be given 30 days to become compliant or the department of corrections will terminate the use of offender labor.

37.9(9) *Disputes.*

a. Anyone who believes that the private sector work program violates this rule shall advise the department of workforce development. A written complaint may be filed in accordance with

workforce development board rule 877—1.5(84A). The workforce development director shall consult with the deputy director of prison industries before the workforce development board makes a final recommendation(s) to resolve any complaint.

b. The deputy director of prison industries will assist the department of workforce development in compiling all information necessary to resolve the dispute. The workforce development board shall notify the deputy director of prison industries and interested parties in writing of the recommended action to resolve a complaint, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.809.

[**ARC 2100C**, IAB 8/19/15, effective 8/12/15]

201—37.10(904) Utilization of offender labor in construction and maintenance projects.

37.10(1) *Definitions.*

"Director" means the chief executive officer of the department of corrections.

"Employer" means a contractor or subcontractor providing maintenance or construction services under contract to the department of corrections or under the department of administrative services.

"Workforce development director" means the chief executive officer of the department of workforce development.

37.10(2) *Scope.* Utilization of offender labor applies only to contractors or subcontractors providing construction or maintenance services to the department of corrections. The contract authority for providing construction or maintenance services may be the department of administrative services.

37.10(3) *Employer application.* Employers working under contract with the state of Iowa may submit an application to the department of corrections to employ offenders. Requests for such labor shall not include work release offenders assigned to community-based corrections under Iowa Code chapter 905.

a. Prior to submitting an application, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall contain the prevailing wage determined by the department of workforce development. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet Web site.

b. The employer's application shall include:

(1) Scope of work, including type of work and required number of workers;

(2) Proposed wage rate;

(3) Location;

(4) Duration; and

(5) Reason for utilizing offender labor.

c. The department of corrections shall verify through the department of workforce development the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the employer that will employ the offenders.

37.10(4) *Verification.* The director of workforce development shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the director, in writing:

a. Verification of the employer's 30-day job listing;

b. The number of qualified applicant referrals and hires made as a result of the job order;

c. The average wage rate for the proposed job(s);

d. The wage range;

e. The prevailing wage as determined by the U.S. Department of Labor;

f. The current unemployment rate for the county where the employer is located;

g. The current employment levels of the employer that will employ the offenders based upon the most recent quarter for which data is available.

37.10(5) *Safety training.* The employer shall document that all offenders employed in construction and maintenance projects receive a ten-hour safety course provided free of charge by the department of workforce development or by a trainer with the appropriate authorization from the Occupational Safety and Health Administration Training Institute.

37.10(6) *Prevailing wages.*

a. The director will not authorize an employer to employ offenders in hard labor programs without obtaining from the department of workforce development employment levels in the locale of the proposed jobs and the prevailing wages for the jobs in question. The average wage rate and wage range from the department of workforce development will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

b. To reduce any potential displacement of civilian workers, the director shall advise prospective employers and eligible offenders of the following requirements:

(1) Offenders will not be eligible for unemployment compensation while incarcerated.

(2) Before the employer initiates work utilizing offender labor, the director shall provide the baseline number of jobs as established by the department of workforce development.

(3) If the contract to employ offender labor exceeds six months, the director shall:

1. Request and receive from the workforce development director the average wage rates and wage ranges for jobs currently held by offenders and current employment levels of employers employing offenders; and

2. Compile a side-by-side comparison of each employer.

37.10(7) *Disputes.* Anyone who believes that the employer's application violates this rule shall present concerns in writing to the workforce development board. A written complaint may be filed with the workforce development board for any dispute arising from the implementation of the employer's application in accordance with workforce development board rule 877—1.6(84A). The workforce development board shall consult with the director prior to making recommendations. The director will assist the workforce development board in compiling all information necessary to resolve the dispute. The workforce development board shall notify the director and interested parties in writing of the corrective action plan to resolve the dispute, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.701.

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◊ Two or more ARCs

1 Prior to 3/20/91, see Prison Industries Advisory Board 635—Chapter 1

ECONOMIC DEVELOPMENT AUTHORITY[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]
[Prior to 9/7/11, see Economic Development, Iowa Department of[261];
renamed Economic Development Authority by 2011 Iowa Acts, House File 590]

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CHAPTER 104
INNOVATIVE BUSINESSES INTERNSHIP PROGRAM

261—104.1(15) Authority. The authority for adopting rules establishing an innovative businesses internship program is provided in Iowa Code section 15.411(4).
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.2(15) Purpose. The purpose of the innovative businesses internship program is to link Iowa students to internship opportunities with innovative small and medium-sized firms and to help such students convert their internships into employment opportunities.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.3(15) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

"Community college" means a community college established under Iowa Code chapter 260C.

"Director" means the director of the economic development authority.

"Innovative business" means the same as defined in Iowa Code section 15E.52(1)*"c."*

"Internship" means temporary employment of a student that focuses on providing the student with work experience in the student's field of study.

"Program" means the innovative businesses internship program established in this chapter.

"Prospective employee" means a student who is anticipated to be hired upon graduation.

"Student" means a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or a student who graduated from high school in Iowa but attends an institution of higher learning outside the state of Iowa.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.4(15) Program funding.

104.4(1) The maximum award shall not exceed $3,100 for any single internship or $9,300 for any single business.

104.4(2) Funds shall only be used for reimbursement of wages during the designated internship period. Students hired as interns shall be paid at least twice the minimum wage.

104.4(3) The authority shall issue funds to a business based upon authority approval of a completed application and the execution of a contract between the business and the authority.

104.4(4) A business may receive financial assistance on a matching basis for a portion of the wages paid to an intern. If providing financial assistance, the authority shall provide the assistance on a reimbursement basis such that for every two dollars of wages earned by the student, one dollar paid by the business is matched by one dollar for the authority.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—104.5(15) Eligible business. Eligible businesses may apply to the authority for assistance under the program. The program is available to Iowa businesses that meet all of the following criteria:

104.5(1) The business must be an Iowa-based business with fewer than 500 employees, with a significant portion employed within the state of Iowa.

104.5(2) The business must be engaged in an innovative business.

104.5(3) The business must offer the internship to students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or to students

who graduated from high school in Iowa but attend an institution of higher learning outside the state of Iowa.

104.5(4) The business's summer internships must last a minimum of 8 weeks (averaging no less than 30 hours per week), and the business's semester internships must last a minimum of 14 weeks (averaging no less than 10 hours per week).

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.6(15) Ineligible business. The following businesses are not eligible for this program:

104.6(1) A business which is engaged in retail sales or which provides health services is ineligible.

104.6(2) A business which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.7(15) Eligible students. Students must be within one to two years of graduation and enrolled at one of Iowa's community colleges, private colleges, or institutions of higher learning under the control of the state board of regents. A student as defined in this chapter is eligible for an internship under this rule. The authority shall encourage youth who reside in economically distressed areas, youth adjudicated to have committed a delinquent act, and youth transitioning out of foster care to participate in the program.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.8(15) Ineligible students. Students who are more than two years from graduation are ineligible. Students who are immediate family members of management employees or board members of the applicant business are ineligible. Students who do not otherwise meet the eligibility requirements described in rule 261—104.7(15) are not eligible.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10]

261—104.9(15) Application submittal and review process.

104.9(1) The authority shall develop a standardized application and make the application available to eligible businesses. To apply for assistance under the program, a business shall submit an application to the authority. Applications may be sent to the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available by contacting the authority at that address or from the authority's Web site at www.iowaeconomicdevelopment.com.

104.9(2) The application will be reviewed and scored by authority staff. The director of the authority will make final funding decisions after considering the recommendations of staff. The director has final decision-making authority on requests for financial assistance for this program. The director may approve, defer or deny an application.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0611C**, IAB 2/20/13, effective 3/27/13; **ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—104.10(15) Application content and other requirements.

104.10(1) A business seeking assistance under the program must complete an application for internship assistance and submit it to the authority. Successful applicants must enter into a contract with the authority prior to posting or advertising the internship.

104.10(2) If an award is made, the business shall secure an intern within the time period stated in the contract between the authority and the business.

104.10(3) The application shall include, but not be limited to, all of the following:

a. The dates and location of the internship.

b. A statement of duties the intern will be performing at the business site. The intern is to be involved in a substantive experience in one or more of the following areas: research and development; engineering; process management and production; product experimentation and analysis; product development; market research; business planning and administration. The application shall also include

information regarding the intern's work space (i.e., access to telephone, computer, and other necessary items).

c. The name of the business's representative who will train and supervise the intern.

d. A statement of the anticipated workforce needs at the business, which shall include an explanation of the current workforce shortage and identify the intern's potential for prospective employment with the business following graduation.

104.10(4) The authority reserves the right to require additional information from the business.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.11(15) Selection process. Applications will be reviewed in the order received by the authority. The director may approve, defer or deny each application for financial assistance, based on the availability of funds. The authority will score applications according to the criteria specified in rule 261—104.12(15). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—104.12(15) Application scoring criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

104.12(1) The intern is involved in a substantive experience in one or more of the following areas: research and development; engineering; process management and production; product experimentation and analysis; product development; market research; business planning and administration. 25 points.

104.12(2) The explanation of the business's anticipated workforce needs and of the intern's potential for prospective employment with the business following graduation. 20 points.

104.12(3) The extent to which the internship duties require independent judgment, creativity, and intelligence to complete and contribute to the business's goals or processes. 10 points.

104.12(4) The internship will have a positive impact on the intern's skills, knowledge and abilities. 15 points.

104.12(5) The internship pays more than twice the minimum wage. 10 points.

104.12(6) The business's contribution to the internship program is above the minimum program match requirement. 10 points.

104.12(7) Intern applications will be accepted from more than one private college, university or community college. 5 points.

104.12(8) The application documents that all considerations, including funding required to begin the internship, have been addressed. 5 points.

[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

261—104.13(15) Contract and reporting.

104.13(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

104.13(2) *Contract required.* The authority shall prepare a contract, which includes, but is not limited to, a description of the internship to be completed; conditions to disbursement; required reports; and the repayment requirements imposed in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on an individual basis.

104.13(3) *Reporting.* A business which has been awarded assistance under the program shall submit any information requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

104.13(4) *Contract amendments.* The board does not need to approve a contract amendment. The director may approve contract amendments consistent with 2011 Iowa Acts, House File 590, section 9.
[**ARC 8848B**, IAB 6/16/10, effective 5/20/10; **ARC 9063B**, IAB 9/8/10, effective 10/13/10; **ARC 9754B**, IAB 9/21/11, effective 10/26/11; **ARC 0611C**, IAB 2/20/13, effective 3/27/13]

These rules are intended to implement Iowa Code section 15.411(4).

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[Filed Emergency ARC 8848B, IAB 6/16/10, effective 5/20/10]
[Filed ARC 9063B (Notice ARC 8849B, IAB 6/16/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9754B (Notice ARC 9617B, IAB 7/13/11), IAB 9/21/11, effective 10/26/11]
[Filed ARC 0611C (Notice ARC 0408C, IAB 10/17/12), IAB 2/20/13, effective 3/27/13]
[Filed Emergency ARC 2099C, IAB 8/19/15, effective 7/20/15]

CHAPTER 110
STEM INTERNSHIP PROGRAM

261—110.1(15,85GA,ch1132,86GA,SF510) Authority. The authority for adopting rules establishing a STEM internship program is provided in Iowa Code section 15.411(3) as amended by 2015 Iowa Acts, Senate File 510, division XI, and in Iowa Code section 15.106A.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.2(15,85GA,ch1132,86GA,SF510) Purpose. The purpose of the STEM internship program is to assist in placing Iowa students studying in the fields of science, technology, engineering, and mathematics into internships that lead to permanent positions with Iowa employers.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.3(15,85GA,ch1132,86GA,SF510) Definitions.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

"Business" means any enterprise located in this state which is operated for profit and under a single management.

"Committee" means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

"Community college" means a community college established under Iowa Code chapter 260C.

"Designated internship period" means the summer or semester internship during which a student is employed in an internship.

"Director" means the director of the economic development authority.

"Internship" means temporary employment of a student that focuses on providing the student with work experience in the student's field of study.

"Program" means the STEM internship program established in this chapter.

"STEM field" means a major course of study within the fields of science, technology, engineering, or mathematics or a related field. For purposes of this chapter, STEM field includes all majors and academic or degree programs listed on the ACT-defined STEM majors and occupations by area list. The ACT-defined STEM majors and occupations by area list may be found at http://www.act.org. If a student has declared a major or enrolled in an academic or degree program not listed on the ACT-defined STEM majors and occupations by area list, the student may still be found eligible for participation in the program if, in the authority's sole discretion, the student's major is substantially similar to a major that is listed on the ACT-defined STEM majors and occupations by area list.

"Student" means a student of one of the Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or a student who graduated from high school in Iowa but now attends an institution of higher learning outside the state of Iowa.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.4(15,85GA,ch1132,86GA,SF510) Program funding and disbursement.

110.4(1) The maximum amount awarded to an employer for any one internship shall not exceed $5,000. The maximum amount that may be awarded to any one employer in any one fiscal year shall not exceed $100,000.

110.4(2) Funds shall only be used for reimbursement of wages paid during the designated internship period. An employer must pay students hired as interns an hourly wage that is at least twice the minimum wage. An employer may apply for program funding for an internship beginning prior to July 1, 2014, but the authority will only reimburse the employer for wages paid on or after July 1, 2014.

110.4(3) The authority will disburse funds to an employer only after approval of a completed application and execution of a contract between the employer and the authority. The authority shall have sole discretion in determining whether an application is fully complete.

110.4(4) An Iowa employer may qualify for financial assistance under the program on a matching basis for a portion of the wages paid to an intern during the designated internship period. If providing financial assistance, the authority shall provide the assistance on a reimbursement basis such that for every two dollars of wages earned by the student, one dollar paid by the employer is matched by one dollar from the authority. Funds will be disbursed on a reimbursement basis.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.5(15,85GA,ch1132,86GA,SF510) Eligible employers. Eligible employers may apply to the authority for assistance under the program. The program is available to employers that meet all of the following criteria:

110.5(1) The employer must be an Iowa-based business and have a significant portion of its employees located within the state of Iowa.

110.5(2) The employer must be employing students who have either declared a major in a STEM field or enrolled in a STEM-related academic or degree program at a community college. The students must be employed as interns at a location in Iowa.

110.5(3) The employer must offer the internship to students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents or to students who graduated from high school in Iowa but attend an institution of higher learning outside the state of Iowa.

110.5(4) The employer must offer either summer or semester-based internships. The summer internships must have a minimum duration of 8 weeks (averaging no less than 30 hours per week), and the employer's semester internships must have a minimum duration of 14 weeks (averaging no less than 10 hours per week).
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.6(15,85GA,ch1132,86GA,SF510) Ineligible employers. The following employers are not eligible for the program:

110.6(1) An employer that is a business engaged in retail sales is ineligible.

110.6(2) An employer which closes or substantially reduces its workforce by more than 20 percent at existing operations in order to relocate substantially the same operations to another area of the state is ineligible for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

110.6(3) An employer that has applied or will apply during the same state fiscal year to the innovative businesses internship under 261—Chapter 104 is ineligible to receive funding under the STEM internship program.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.7(15,85GA,ch1132,86GA,SF510) Eligible students. To be eligible, a person shall meet the requirements of a student as defined in rule 261—110.3(15,85GA,ch1132,86GA,SF510), must be within one to two years of graduation, shall have declared a major in a STEM field or enrolled in a STEM-related academic or degree program at a community college, and shall be selected for an internship at an Iowa employer during a designated internship period.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.8(15,85GA,ch1132,86GA,SF510) Ineligible students. Students who are more than two years from graduation are ineligible. Students who have not declared a major, have not declared a major in a STEM field, or are not enrolled in a STEM-related academic or degree program at a community college are ineligible. Students who are immediate family members of management employees or board members of the applicant employer are ineligible. Students who do not otherwise meet the eligibility requirements described in rule 261—110.7(15,85GA,ch1132,86GA,SF510) are ineligible.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.9(15,85GA,ch1132,86GA,SF510) Application submittal and review process.

110.9(1) The authority shall develop a standardized application and make the application available to eligible employers. To apply for assistance under the program, an employer shall submit an application

to the authority. Required forms and instructions are available by contacting the authority or from the authority's Internet site at www.iowaeconomicdevelopment.com.

110.9(2) Applications will be reviewed and scored by the staff of the authority. The director of the authority will make final funding decisions after considering the recommendations of staff. The director has final decision-making authority on requests for financial assistance for this program. The director may approve, defer or deny an application.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.10(15,85GA,ch1132,86GA,SF510) Application content and other requirements.

110.10(1) An employer seeking assistance under the program must complete an application for internship assistance and submit it to the authority.

110.10(2) If an award is made, the employer shall secure an intern within the time period stated in the contract between the authority and the employer.

110.10(3) The application shall include, but not be limited to, all of the following:

a. The dates and location of the internship.

b. A statement of duties the student will be performing at the internship site. The student shall be involved in a substantive experience in an area closely related to the student's STEM field. The application shall also include information regarding the student's work space (i.e., access to telephone, computer, and other necessary items).

c. The name of the employer's representative who will train and supervise the student.

d. A statement of the anticipated workforce needs at the internship site. The statement shall include an explanation of the current workforce shortage and identify the student's potential for prospective employment with the employer following graduation.

110.10(4) In accepting applications from employers, the authority may require additional information reasonably related to the program.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.11(15,85GA,ch1132,86GA,SF510) Award process. Applications will be reviewed in the order received by the authority. The authority will attempt to award as many eligible internships as funding allows. However, the authority may deny applications for incompleteness or because of insufficient funds. The authority will score applications according to the criteria specified in rule 261—110.12(15,85GA,ch1132,86GA,SF510). To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.12(15,85GA,ch1132,86GA,SF510) Application scoring criteria. When applications for financial assistance under the program are reviewed, the following criteria will be considered and scored as described below:

110.12(1) The extent to which the student is involved in a substantive experience closely related to the student's STEM field of study. 30 points.

110.12(2) The quality and sufficiency of the explanation of the employer's anticipated workforce needs and of the student's potential for prospective employment with the employer or another Iowa employer following graduation. 30 points.

110.12(3) The extent to which the internship duties require independent judgment, creativity, and intelligence to complete and contribute to the employer's goals or processes. 10 points.

110.12(4) The extent to which the internship will have a positive impact on the student's skills, knowledge and abilities. 10 points.

110.12(5) The extent to which the internship pays more than twice the minimum wage. 10 points.

110.12(6) Whether applications will be accepted by the employer from more than one private college, university or community college. 5 points.

110.12(7) Whether the application establishes that all relevant internship considerations, including necessary funding, have been addressed by the employer in advance. 5 points.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

261—110.13(15,85GA,ch1132,86GA,SF510) Contract and reporting.

110.13(1) *Notice of award.* Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

110.13(2) *Contract required.* An employer receiving an award under the program shall execute a standard contract prepared by the authority. The contract may include, but is not limited to, a description of the internship to be completed, the conditions for disbursement, any required reports, the applicable events of default, the repayment requirements imposed in the event of default, and any other specific provisions that may be established from time to time on a case-by-case basis.

110.13(3) *Reporting.* An employer receiving assistance under the program shall submit any information reasonably requested by the authority in sufficient detail to permit the authority to prepare any reports required by the authority, the board, the general assembly or the governor's office.

110.13(4) *Contract amendments and terminations.* Contract amendments or termination may be approved by the director without board approval.
[**ARC 2099C**, IAB 8/19/15, effective 7/20/15]

These rules are intended to implement 2014 Iowa Acts, chapter 1132, section 12, and Iowa Code section 15.411(3) as amended by 2015 Iowa Acts, Senate File 510, division XI.

[Filed Emergency ARC 2099C, IAB 8/19/15, effective 7/20/15]

REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, Chapter 1245.

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[Prior to 12/17/86, Revenue Department[730]]

701—71.1(405,427A,428,441,499B) Classification of real estate.

71.1(1) *Responsibility of assessors.* All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. There can be only one classification per property under this rule, except as provided for in paragraph 71.1(5)*"b."* An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building. A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The assessor shall classify property according to its present use and not according to its highest and best use. See subrule 71.1(9) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 701—71.8(428,441).

71.1(2) *Responsibility of boards of review, county auditors, and county treasurers.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

71.1(3) *Agricultural real estate.*

a. Generally. Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph *"a"* or *"b"* of this subrule.

b. Vineyards. Beginning with valuations established on or after January 1, 2002, vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.

c. Algae cultivation and production. Beginning with valuations established on or after January 1, 2013, real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production shall be classified as agricultural real estate if the real estate is an enclosed pond or land which contains a photobioreactor. Pursuant to 2013 Iowa Acts, House File 632, section 1, a photobioreactor is not attached to land upon which it sits and shall not be assessed and taxed as real property.

(1) Determining direct usage. To determine if real estate is used "directly" in the cultivation and production of algae, one must first ensure that the real estate is used to perform activities that cultivate and produce algae and is not used for activities that occur before or after the cultivation and production of algae. If the real estate is used to perform activities for the cultivation and production of algae, to be "directly" so used, the real estate must be used to perform activities that are integral and essential to the cultivation and production, as distinguished from activities that are incidental, merely convenient to, or remote from cultivation and production. The fact that real estate is used for activities that are essential or necessary to the cultivation and production of algae does not mean that the real estate is also "directly" used in production. Even if the real estate is used for activities that are essential or necessary

to the cultivation and production of algae, if the activities are far enough removed from the cultivation or production of algae, the real estate would not qualify for the agricultural designation.

(2) Examples. The following are nonexclusive examples of real estate which would not be directly used in the cultivation and production of algae:

1. Real estate that is used to store, assemble, or repair machinery and equipment that is used for cultivation and production of algae.
2. Real estate that is used in the management, administration, advertising, or selling of algae.
3. Real estate that is used in the management, administration, or planning of the cultivation and production of algae.
4. Real estate that is used for packaging of the algae which has been produced and cultivated.

71.1(4) *Residential real estate.* Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation containing fewer than three dwelling units, as that term is defined in subparagraph 71.1(5)*"a"*(5), including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. "Used in conjunction with" means that the structure or improvement is located on the same parcel, on contiguous parcels, or on a parcel directly across a street or alley as the building or structure containing the dwelling and when marketed for sale would be sold as a unit. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, multiple housing cooperatives organized under Iowa Code chapter 499A and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use for human habitation shall be classified as residential real estate regardless of who occupies the apartment. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

71.1(5) *Multiresidential real estate.* Multiresidential real estate shall include all lands and buildings which are primarily used or intended for human habitation containing three or more separate dwelling units as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling units. For purposes of this rule, "used in conjunction with" means that the structure or improvement is located on the same parcel, on contiguous parcels, or on a parcel directly across a street or alley as the building or structure containing the dwelling units and when marketed for sale would be sold as a unit. Multiresidential real estate shall include that portion of a building that is used for human habitation and a proportionate share of the land upon which the building is situated, regardless of the number of dwelling units located in the building, if the use for human habitation is not the primary use of the building and such building is not otherwise classified as residential property. Multiresidential real estate shall include mobile home parks, manufactured home communities, land-leased communities, and assisted living facilities. Multiresidential real estate shall exclude properties referred to in Iowa Code section 427A.1(8) or properties subject to valuation under Iowa Code section 441.21(2).

a. Definitions. For purposes of this subrule, the following definitions apply:

(1) "Mobile home park" means any land upon which three or more mobile homes, as defined in Iowa Code section 435.1, or manufactured homes, as defined in Iowa Code section 435.1, or a combination of such homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer, or septic, and electrical services available. "Mobile home park" does not include homes where the owner of the land is providing temporary housing for the owner's employees or students.

(2) "Manufactured home community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes, as defined in Iowa Code section 435.1, are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the community. "Manufactured home community" shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students. "Manufactured home community" means the same as "land-leased community" as defined in Iowa Code sections 335.30A and 414.28A.

(3) "Land-leased community" means any site, lot, field, or tract of land under common ownership upon which ten or more occupied manufactured homes are harbored, either free of charge or for revenue purposes, and shall include any building, structure, or enclosure used or intended for use as part of the equipment of the land-leased community. "Land-leased community" shall not be construed to include homes, buildings, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students.

(4) "Assisted living facility" means real estate that provides housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to three or more tenants in a physical structure which provides a homelike environment. "Assisted living facility" also includes a health care facility, as defined in Iowa Code section 135C.1, an elder group home, as defined in Iowa Code section 231B.1, a child foster care facility under Iowa Code chapter 237, or property used for a hospice program as defined in Iowa Code section 135J.1.

(5) "Dwelling unit" means an apartment, group of rooms, or single room which is occupied as separate living quarters or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy.

b. Dual classification. Assessors shall use dual classification on properties where the primary use of the property is commercial or industrial and a portion or portions of the property meet the requirements of the multiresidential classification. Properties where the primary use is multiresidential shall not receive a dual classification but instead shall be classified multiresidential for the entire parcel. There are only two permissible dual classifications: commercial/multiresidential and industrial/multiresidential. The assessor shall assign to that portion of the parcel that satisfies the requirements the classification of multiresidential property and to such other portions of the parcel the property classification for which such other portions qualify. The assessor shall maintain the valuation and assessment of property with a dual classification on one parcel record.

c. Section 42 housing. Property that has elected special valuation procedures under Iowa Code section 441.21(2) and is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code shall not be classified as multiresidential property as required by 2014 Iowa Acts, House File 2466, section 3.

d. Short-term leases. A hotel, motel, inn or other building where rooms or dwelling units are usually rented for less than one month shall not be classified as multiresidential property.

71.1(6) *Commercial real estate.* Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, and property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code and has not been withdrawn from Section 42 assessment procedures under Iowa Code section 441.21(2). Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1)*"j,"* except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use as a commercial venture, other than leased for human habitation, shall be classified as commercial real estate. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

71.1(7) *Industrial real estate.*

a. Land and buildings.

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(7)*"a"*(1). Property in which the performance of these activities is only incidental to the property's primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises' primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises' primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo,* 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property's primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property's primary use for commercial purposes — the storage of grain.

(3) Property used primarily for the extraction of rock or mineral substances from the earth is not a manufacturing establishment if the only processing performed on the substance is to change its size by crushing or pulverizing. See *River Products Company v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

b. Machinery.

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner,* 247 Iowa 1264, 78 N.W.2d 527 (1956).

(2) Machinery owned or used by a manufacturer but not used within the manufacturing establishment is not assessed as industrial real estate. For example, "X" operates a factory which manufactures building materials for sale. In addition, "X" uses some of these building materials in construction contracts. The machinery which "X" would primarily use at the construction site would not be used in a manufacturing establishment and, therefore, would not be assessed as industrial real estate.

(3) Machinery used in manufacturing but not used in or by a manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

(4) Where the primary function of a manufacturing establishment is to manufacture personal property that is consumed by the manufacturer rather than sold, the machinery used in the manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963).

71.1(8) *Point-of-sale equipment.* As used in Iowa Code section 427A.1(1)*"j,"* the term "point-of-sale equipment" means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and which is located at the counter, desk, or other specific point at which the transaction occurs. As used in this subrule, the term "sale" means the sale or rental of goods or services and includes both retail and wholesale transactions. Point-of-sale equipment does not include equipment used primarily for depositing or withdrawing funds from financial institution accounts.

71.1(9) *Housing development property.*

a. Ordinances adopted or amended on or after January 1, 2011.

(1) Adoption of ordinance by board of supervisors. A county board of supervisors may adopt an ordinance providing that property acquired and subdivided for development of housing on or after January 1, 2011, shall continue to be assessed for taxation in the manner it was assessed prior to the acquisition. Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing or 5 years from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted or otherwise made effective under 2011 Iowa Code Supplement section 405.1(1)*"a"* to extend the 5-year time period for a period of time not to exceed 5 years beyond the end of the original 5-year period established under 2011 Iowa Code Supplement section 405.1(1). Thus, the maximum special assessment time for ordinances adopted on or subsequent to January 1, 2011, is 10 years. An extension of an ordinance under 2011 Iowa Code Supplement section 405.1(1)*"a"* may apply to all or a portion of the property that was subject to the original ordinance.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement section 405.1(1)*"a,"* extending the county ordinance not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or subsequent to January 1, 2011, is 10 years if the city council amends an ordinance originally adopted by the county board of supervisors.

(4) Sale of lot; expiration of 5-year or extended period. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 5-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

(5) Definition of "subdivide." As used in both paragraphs 71.1(9)*"a"* and *"b,"* "subdivide" means to divide a tract of land into three or more lots.

b. Ordinances adopted on or after January 1, 2004, but prior to January 1, 2011.

(1) Ordinances adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), to the extent such ordinances affect the assessment of property subdivided for development of housing on or after January 1, 2004, but before January 1, 2011, shall remain in effect or otherwise be made effective, and such ordinances:

1. Adopted under 2011 Iowa Code Supplement section 405.1(1), applicable to counties with a population of less than 20,000, shall be extended, from a period of 5 years, to apply to a period of 10 years from the date of subdivision.

2. Adopted under 2011 Iowa Code Supplement section 405.1(2), applicable to counties with a population of 20,000 or more, shall be extended, from a period of 3 years, to apply to a period of 8 years from the date of subdivision.

Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing, or 10 years pursuant to paragraph "1" above or 8 years pursuant to paragraph "2" above (or the extended period, if applicable) from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted under 2011 Iowa Code Supplement section

405.1(1) or 405.1(2) to extend the 10- and 8-year periods, respectively, for a period of time not to exceed 5 years beyond the end of the 10- and 8-year periods established under 2011 Iowa Code Supplement section 405.1(1)*"b."* Thus, the maximum special assessment time for ordinances adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years. For counties with a population of 20,000 or more, the maximum shall be 13 years.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), extending the county ordinances not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years if the city council amends an ordinance originally adopted by the board of supervisors. For counties with a population of 20,000 or more, the maximum special assessment time shall be 13 years.

(4) Sale of lot. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 10- or 8-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

71.1(10) *Assessment of platted lots.*

a. When a subdivision plat is recorded pursuant to Iowa Code chapter 354 on or after January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 5 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

b. For subdivision plats recorded pursuant to Iowa Code chapter 354 (relating to division and subdivision of land) on or after January 1, 2004, but before January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 8 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

c. 2011 Iowa Code Supplement section 441.72 does not apply to special assessment levies.

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4 and 441.22 and chapter 499B and Iowa Code Supplement section 441.21 as amended by 2002 Iowa Acts, House File 2584.
[**ARC 8559B**, IAB 3/10/10, effective 4/14/10; **ARC 0400C**, IAB 10/17/12, effective 11/21/12; **ARC 1196C**, IAB 11/27/13, effective 1/1/14; **ARC 1765C**, IAB 12/10/14, effective 1/14/15]

701—71.2(421,428,441) Assessment and valuation of real estate.

71.2(1) *Responsibility of assessor.* The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

71.2(2) *Responsibility of other assessing officials.* Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall follow the provisions of subrule 71.2(1) and rules 701—71.3(421,428,441) to 701—71.7(421,427A,428,441).

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.3(421,428,441) Valuation of agricultural real estate. Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the Iowa Real Property Appraisal Manual and any other guidelines issued by the department of revenue pursuant to Iowa Code section 421.17(18).

71.3(1) *Productivity.*

a. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), the USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and distribute such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

b. In distributing such valuation to each parcel under paragraph 71.3(1)*"a,"* the assessor shall adjust non-cropland. The adjustment shall be applied to non-cropland with a corn suitability rating (CSR) that is greater than 50 percent of the average CSR for cropland for the county. The adjustment shall be determined for each county based upon the five-year average difference in cash rent between non-irrigated cropland and pasture land as published by NASS. The assessor may utilize the USDA FSA-published Common Land Unit digital data or other reliable sources in determining non-cropland. Counties shall implement the adjustments under this paragraph on or before the 2017 assessment year. The department of revenue may, in a case involving hardship, extend the implementation of the adjustments required under this paragraph to the 2019 assessment year. No extension of time shall be granted unless the county makes a written request to the department of revenue for such action.

c. A taxpayer may apply to the county for the adjustment to non-cropland under paragraph 71.3(1)*"b"* beginning with the 2014 assessment and until the county's full implementation of this subrule. Upon application, and subsequent approval by the assessor, the county assessor shall adjust non-cropland as provided in paragraph 71.3(1)*"b."* Once a taxpayer applies for the adjustment, and upon approval, the assessor shall make the adjustment to the assessment year for which the application was submitted and until the county's full implementation of this subrule, without the need to reapply for the adjustment.

d. EXAMPLE. The following is an example of the calculation used to compute adjustment on land determined to be non-cropland with a CSR that is greater than 50 percent of the average CSR for cropland for the county:

Average county CSR rating for cropland	80 CSR
50% of average cropland CSR	40 CSR
Example of non-cropland soil 11b CSR rating	58 CSR
Non-cropland CSR points to be adjusted	58 − 40 = 18 CSR points
5-year average rent for non-irrigated cropland	$163.60
5-year average rent for pasture land	$48.30
Percent difference (rounded)	1 − ($48.30/$163.60) = 70%
Apply the percent difference to points to be adjusted	18 CSR points × (1 − .70) = 5.40 adjusted CSR points
Adjusted CSR non-cropland	40 + 5.40 = 45.40 adjusted CSR points

71.3(2) *Agricultural factor.* In order to determine a productivity value for agricultural buildings and structures, assessors must make an agricultural adjustment to the market value of these buildings and structures by developing an "agricultural factor" for the assessors' jurisdictions. The agricultural factor for each jurisdiction is the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land within the assessing jurisdiction. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. The agricultural factor must be applied uniformly to all agricultural buildings and structures in the assessing jurisdiction. As an example, if a building's actual value is $500,000 and the agricultural factor is 30 percent, the productivity value of that building is $150,000. See *H & R Partnership v. Davis County Board of Review,* 654 N.W.2d 521 (Iowa 2002). The 2007, 2008, and 2009 average of the market value of land will be used in determining the agricultural factor for assessment year 2011. A

five-year market value average of land for years used to determine the productivity formula will be used to determine the agricultural factor for assessment year 2013 and subsequent assessment years.

71.3(3) *Classification.* Land classified as agricultural real estate includes the land beneath any dwelling and appurtenant structures located on that land and shall be valued by the assessor pursuant to rule 701—71.3(421,428,441). An assessor shall not value a part of the land as agricultural real estate and a part of the land as if it is residential real estate.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

[**ARC 8542B**, IAB 2/24/10, effective 3/31/10; **ARC 9478B**, IAB 4/20/11, effective 5/25/11; **ARC 0770C**, IAB 5/29/13, effective 7/3/13]

701—71.4(421,428,441) Valuation of residential real estate. Residential real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of residential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.5(421,428,441) Valuation of commercial real estate. Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

71.5(1) *Property of long distance telephone companies.* The director of revenue shall assess the property of long distance telephone companies as defined in Iowa Code section 476.1D(10) which property is first assessed for taxation on or after January 1, 1996, in the same manner as commercial real estate.

71.5(2) *Low-income housing subject to Section 42 of the Internal Revenue Code.*

a. Productive and earning capacity. In assessing property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code which limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.

b. Direct capitalization method. The income approach to valuation shall be applied using the direct capitalization method. The assessor may use the discounted cash flow method as a test of the reasonableness of the results produced by the direct capitalization method. The direct capitalization method of the income approach involves dividing the Net Operating Income (NOI) on a cash basis by an overall capitalization rate to derive an indication of the value of the property for the assessment year.

In applying the direct capitalization method, the assessor shall develop a normalized measure of annual NOI based on the productive and earning capacity of the development utilizing (1) the actual rent schedule applicable for each of the available units as of January 1 of the year of assessment indicating the actual rent to be paid by the resident plus any Section 8 rental assistance or other direct cash rental subsidy provided to the resident by federal, state or local rent subsidy programs as limited pursuant to Section 42 of the Internal Revenue Code, (2) a normal vacancy/collection allowance, (3) the prior year's actual and current year's projected annual operating expenses associated with the property, excluding noncash items such as depreciation and amortization, but including property taxes and those actual costs expected to be incurred and paid as required by Internal Revenue Code Section 42 regulations, provisions, and restrictions as applicable to the assessment year, and (4) an appropriate provision for replacement reserves.

If no separate line item is included for reserves for replacement in the historic income and expense data, then the maintenance and repair categories of the historic expense data must be itemized. For properties that have attained a normalized operating history, the NOI results of the prior three years (as represented in the statements variously named as the Income and Loss Statement, the Profit and

Loss Statement, the Income Statement, the Actual to Budget Comparison Statement, Balance Sheet, or some name variation of these) may be used to provide the basis for determining the normalized NOI used for purposes of applying the direct capitalization method for the year of assessment, provided an appropriate replacement reserve is included in the NOI determination and provided any additional costs required as a result of Section 42 regulation or compliance changes for the assessment year are included as an operating expense in the NOI determination. In addition, the assessor may utilize the current year operating budget to develop a measure of NOI for the assessment year. The assessor, in developing the measure of annual NOI on a cash basis, shall not consider as income any potential rental income differential that could otherwise be received from the property if the rents were not limited pursuant to Section 42 of the Internal Revenue Code, any tax credit equity, any tax credit value, or other subsidized financing.

c. Filing of reports. It shall be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year. The assessor may require the filing of additional information if deemed necessary.

d. Capitalization rate. The overall capitalization rate to be used in applying the direct capitalization method for a Section 42 property is developed through the band-of-investment technique. The capitalization rate will be calculated annually by the Iowa department of revenue and distributed to all Iowa assessors by March 1. The capitalization rate is a composite rate weighted by the proportions of total property investment represented by debt and equity. The capital structure weights equity at 80 percent and debt at 20 percent unless actual market capital structure can be verified to the assessor. The yield, or market rate of return, for equity is calculated using the capital asset pricing model (CAPM). The yield for debt is equivalent to the average yield on 25-year Treasury bonds referred to as the Treasury long-term average rate. An example of the band-of-investment technique to be utilized is as follows:

	% to Total	Yield	Composite
Equity	80%	11.05%	8.84%
Debt	20%	5.94%	1.19%
	100%		10.03%

e. Capital asset pricing model. The capital asset pricing model (CAPM) is utilized to develop the equity rate. The formula is:

	Re	=	B (Rm - Rf) + Rf
Where:	Re	=	return on equity
	B	=	beta
	Rm	=	return on the market
	Rf	=	risk-free rate of return
	Rm - Rf	=	market-risk premium

The beta is assumed to be 1 which indicates the risk level to be consistent with the market as a whole. The risk-free rate is calculated by finding the average of the three-month and six-month Treasury bill. The return on the market is calculated by taking the average of the return on the market for the Merrill Lynch Universe and Standard and Poor's 500 or by reference to other published secondary sources.

f. Properties under construction. For Section 42 properties under construction, the assessor may value the property by applying the percentage of completion to the replacement cost new (RCN) as calculated from the Iowa Real Property Appraisal Manual and adding the fair market value of the land. Alternatively, projected income and expense data may be utilized if available.

g. Negative or minimal NOI. If the Section 42 property shows a negative or minimal net operating income (NOI), the indicator of value as set forth in these rules shall not be utilized.

h. Eligibility withdrawn. The property owner shall notify the assessor when property is withdrawn from Section 42 eligibility under the Internal Revenue Code. The notification must be provided by March 1 of the assessment year or the owner is subject to a penalty of $500.

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 as amended by 2004 Iowa Acts, Senate File 2296, and 476.1D(10).

701—71.6(421,428,441) Valuation of industrial land and buildings. Industrial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code subsection 421.17(18), and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

701—71.7(421,427A,428,441) Valuation of industrial machinery. Industrial machinery as referred to in Iowa Code section 427A.1(1)*"e"* shall include all machinery used in manufacturing establishments and shall be assessed as real estate even though such machinery might be assessed as personal property if not used in a manufacturing establishment.

In determining the actual value of industrial machinery assessed as real estate, the assessor shall give consideration to the "Industrial Machinery and Equipment Valuation Guide" issued by the department of revenue and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 427A.1, 428.4 and 441.21.

701—71.8(428,441) Abstract of assessment. Each city and county assessor shall submit annually to the director of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department of revenue, and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the director of revenue in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

701—71.9(428,441) Reconciliation report. The assessor's report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the director in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

701—71.10(421) Assessment/sales ratio study.

71.10(1) *Basic data.* Basic data shall be that submitted to the department of revenue by county recorders and city and county assessors on forms prescribed and provided by the department, information furnished by parties to real estate transactions, and information obtained by field investigations made by the department of revenue.

71.10(2) *Responsibility of recorders and assessors.* County recorders and city and county assessors shall complete the prescribed forms as required by Iowa Code subsection 421.17(6) and rule 701—79.3(428A) in accordance with instructions issued by the department. Assessed values entered on the prescribed form shall be those established as of January 1 of the year in which the sale takes place.

71.10(3) *Normal sales.* All real estate transfers shall be considered by the department of revenue to be normal sales unless there exists definite information which would indicate the transfer was not an arms-length transaction or is of an excludable nature as provided in Iowa Code section 441.21.

This rule is intended to implement Iowa Code section 421.17.

701—71.11(441) Equalization of assessments by class of property. Commencing in 1977 and every two years thereafter, the director of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule 701—71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report which is a part of the abstract, the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the director determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate valuation for that class of property as determined by the director pursuant to rule 701—71.12(441). Equalization orders of the director shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities which are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

701—71.12(441) Determination of aggregate actual values.

71.12(1) *Agricultural real estate.*

a. Use of income capitalization study. The equalized valuation of agricultural realty shall be based upon its productivity and net earning capacity and shall be determined in accordance with the provisions of this subrule. Data used shall pertain to crops harvested during the five-year period ending with the calendar year in which assessments were last equalized. The equalized valuation of agricultural realty shall be determined for each county as follows:

(1) Computation of county acres. This information shall be obtained from the USDA National Agricultural Statistics Service.

1. Total acres in farms: Total acreage used for agricultural purposes.
2. Corn acres: Sum of corn acres harvested including silage, popcorn and acres planted for sorghum.
3. Oats and wheat acres: Sum of oats and wheat acres harvested.
4. Soybean acres: Soybean acres harvested.
5. Hay acres: All hay acres harvested.
6. Pasture acres: All pasture acres. Total pasture acres shall be determined by multiplying the total acres in farms reported by the USDA National Agricultural Statistics Service by the percentage which total pasture land as reported in the most recent U.S. Census of Agriculture bears to the total acreage in farmland also reported in the most recent U.S. Census of Agriculture. The amount of tillable and nontillable pasture acres shall be determined as follows:

1.	From the most recent U.S. Census of Agriculture obtain the following:		
	Cropland used only for pasture and grazing	_____	acres
	Woodland pasture	_____	acres
	Pasture land and rangeland (other than cropland and woodland pasture)	_____	acres
	TOTAL PASTURE LAND (total of above):	_____	acres
2.	Determine what percentage of the total pasture land is cropland used only for pasture:	_____	%
3.	Apply the percentage in "2" above to the 5-year average total acres of pasture as determined above to determine the pasture acres to be classified as tillable pasture. The remainder of the 5-year average shall be classified as nontillable pasture land.	_____	acres

7. Government programs: Determine the 5-year average acres participating in applicable government programs. Obtain data from the USDA Farm Service Agency, including but not limited to acreage devoted to the Payment-In-Kind (PIK), diverted and deficiency programs.

8. Other acres: The difference between the total acreage for land uses listed above and the total of all land in farms. Add the total of the corn, oats, soybeans, hay, tillable and nontillable pasture and diverted acres. Subtract this total from total acres in farms. The residual is classified as other acres.

(2) Computation of county yields. This information shall be obtained for each county from the USDA National Agricultural Statistics Service.

1. Corn yield (including silage): Number of bushels of corn harvested for grain per acre.
2. Oat yield (including wheat): Number of bushels of oats harvested per acre.
3. Soybean yield: Number of bushels per acre harvested.
4. Hay yield in tons: Number of tons per acre harvested.

(3) Computation of county gross income.

1. Corn: One-half of the 5-year average production multiplied by the 5-year average price received for corn.

2. Silage: One-half of the 5-year average number of acres devoted to the production of silage multiplied by the 5-year average production per acre for corn. The amount of production so determined shall be added to the 5-year average production for corn and included in the determination of the gross income for corn.

3. Soybeans: One-half of the 5-year average production multiplied by the 5-year average price received.

4. Oats: One-half of the 5-year average production of oats and wheat multiplied by the 5-year average price received for oats.

5. Price adjustment: For corn, soybeans, hay, and oats, the prices used shall be as obtained from the USDA National Agricultural Statistics Service and shall be adjusted to reflect any individual county price conditions prior to the 2007 crop year. For the 2007 crop year and later, the USDA National Agricultural Statistics Service district prices shall be used and shall be adjusted to reflect any individual county price conditions.

6. Government programs: Gross income shall be one-half of the 5-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the USDA Farm Service Agency.

7. Hay: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to hay by the product obtained by multiplying one-fourth of the 5-year average hay yield by the 5-year average price received for all types of hay.

8. Tillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to tillable pasture by the product obtained in "hay" above.

9. Nontillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to nontillable pasture by one-half the product obtained in "hay" above.

10. Other acres: Income shall be the product of the number of other acres multiplied by 17 percent of the net income per acre for all other land uses.

(4) Computation of county production costs. The following data and procedures shall be used to determine specific county production costs.

1. Basic average landlord production costs. Landlord production costs for corn, soybeans, oats, diverted acres, hay, tillable pasture, nontillable pasture, fertilizer costs, and facilities' costs shall be obtained for each year from Iowa State University.

2. Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the 5-year state average yield per acre and the 5-year county average yield per acre by the 5-year average facilities' costs. If a county's yield exceeds the state yield, production costs are increased by this amount. If a county's yield is less than the state yield, production costs are reduced by this amount.

3. Fertilizer cost adjustment. The adjustment for fertilizer costs is determined as follows: Multiply the difference between the 5-year state average corn yield per acre and the 5-year county average corn yield per acre obtained from the USDA National Agricultural Statistics Service by the fertilizer cost amount per bushel determined by dividing the statewide average cost of landlord's share of fertilizer cost per acre from Iowa State University by the statewide average corn yield per acre to produce the corn fertilizer cost per bushel adjustment. This amount is then multiplied by the 5-year county average corn acres determined in (2) above.

4. Expense adjustments. If a county's 5-year average corn yield is greater than the state 5-year average corn yield, this amount is allowed as an additional expense. If the county's average is less than the state average, this amount is an expense reduction.

5. Liability insurance cost adjustment. The 5-year average per acre cost of obtaining tort liability insurance shall be determined.

(5) Computation of county net income. From the total gross income, subtract the total expenses. Divide the resulting total by the total number of acres.

(6) Computation of dwelling adjustment factor. The amount determined in (5) above shall be reduced by 10.6 percent.

(7) Computation of county tax adjustment. Subtract the 5-year average per acre real estate taxes levied for land and structures including drainage and levee district taxes but excluding those levied against agricultural dwellings from the amount determined in (6) above. Taxes shall be the tax levied for collection during the 5-year period as reported by county auditors, and reduced by the amount of the agricultural land tax credit.

(8) Calculation of county valuation per acre. Divide the net income per acre ((7) above) for each county as determined above by the capitalization rate specified in Iowa Code section 441.21. The quotient shall be the actual per acre equalized valuation of agricultural land and structures for the current equalization year.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of agricultural real estate.

c. Determination of value. The aggregate actual value of agricultural real estate in each county shall be determined by multiplying the equalized per acre value by the number of acres of agricultural real estate reported on the abstract of assessment for the current year, adjusted where necessary by the results of any field investigations conducted by the department of revenue and any other relevant data available.

71.12(2) *Residential real estate outside and within incorporated cities.*

a. Use of assessment/sales ratio study. Basic data shall be that set forth in rule 701—71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue to determine the level of assessment of residential real estate.

c. Equalization appraisal selection procedures for residential real estate. Residential properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser assigned to the jurisdiction shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 1,397 improved residential units. Dividing 1,397 by 10, 139.7 is arrived at, which is rounded down to 139. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 139 is to be selected. The person randomly selected number 20.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 20 and adding the interval number of 139 to it, each resulting number provides the following systematic sequence: 20, 159, 298, 437, 576, 715, 854, 993, 1,132, 1,271.

(2) Number of improved properties.

County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers
Franklin Twp.	57	1-57
Pleasant View	160	58-217
Jackson Twp.	56	218-273
Johnston	300	274-573
Polk Twp.	110	574-683
Washington Twp.	114	684-797
Maryville	306	798-1103
Camden Twp.	110	1104-1213
Salem	184	1214-1397
Total	1,397	

(3) Determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	57	1-57	20	20
Pleasant View	160	58-217	159	102
Jackson Twp.	56	218-273		
Johnston	300	274-573	298,437	25,164
Polk Twp.	110	574-683	576	3
Washington Twp.	114	684-797	715	32
Maryville	306	798-1103	854,993	57,196
Camden Twp.	110	1104-1213	1132	29
Salem	184	1214-1397	1271	58
Total	1,397			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 20. Since the improved residential properties in Franklin Township have been assigned code numbers 1 to 57, sequence number 20 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the twentieth improved residential entry.

Document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Current year sale
Partial assessment
Prior equalization appraisal
Tax-exempt
Value established by court action
Value is not more than $10,000
Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 20 is ineligible, use code number 21 as a substitute. If code number 21 is ineligible, use code number 22, etc., until an eligible property is found.

If the procedure described in 71.12(2)*"c"*(3)"3" moves the substitute property to another city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(2)*"c"*(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(2)*"c"*(3)"2." Alternate properties are selected by using the same procedure described in 71.12(2)*"c"*(3)"3."

5. Follow procedures 71.12(2)*"c"*(3), items "1" to "4," for each of the other originally selected sequence numbers.

71.12(3) *Multiresidential real estate.*

a. Use of assessment/sales ratio study. Basic data shall be that set forth in rule 701—71.11(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of multiresidential real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of multiresidential real estate.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

c. Equalization appraisal selection procedures for multiresidential real estate. To the extent possible, multiresidential properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the manner outlined in paragraph 71.12(4)*"c."*

The following restrictions shall render a property ineligible for the appraisal selection for multiresidential property:

Vacant building
Current-year sale
Partial assessment
Tax-exempt
Only one portion of a total property unit (example—a parking lot of a grocery store)
Value established by court action
Value is not more than $10,000
Building on leased land

71.12(4) *Commercial real estate.*

a. Use of assessment/sales ratio study. Basic data shall be that set forth in rule 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value. Properties receiving a dual classification with the primary use being commercial shall be included.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

c. Equalization appraisal selection procedures for commercial real estate. Commercial properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the manner outlined below. Properties receiving a dual classification with the primary use being commercial shall be included.

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 397 improved commercial units. Dividing 397 by 10, 39.7 is arrived at, which is rounded down to 39. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 39 is to be selected. The person randomly selected number 2.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 2 and adding the interval number of 39 to it, each resulting number provides the following systematic sequence: 2, 41, 80, 119, 158, 197, 236, 275, 314, 353.

(2) Number of improved properties.

1. City jurisdictions—Utilizing the assessment book or a computer printout which follows the same order as the assessment book, consecutively number all the improved units and document the procedure.

2. County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order

of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers
Franklin Twp.	4	1-4
Pleasant View	60	5-64
Jackson Twp.	9	65-73
Johnston	100	74-173
Polk Twp.	10	174-183
Washington Twp.	14	184-197
Maryville	106	198-303
Camden Twp.	10	304-313
Salem	84	314-397
Total	397	

(3) The department appraiser shall determine the location of the improved properties selected for appraisal and document the procedure.

EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	4	1-4	2	2
Pleasant View	60	5-64	41	37
Jackson Twp.	9	65-73		
Johnston	100	74-173	80,119,158	7,46,85
Polk Twp.	10	174-183		
Washington Twp.	14	184-197	197	14
Maryville	106	198-303	236,275	39,78
Camden Twp.	10	304-313		
Salem	84	314-397	314,353	1,40
Total	397			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 2. Since the improved commercial properties in Franklin Township have been assigned code numbers 1 to 4, sequence number 2 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the second improved commercial entry.

The department appraiser shall document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building

Current-year sale

Partial assessment

Prior equalization appraisal

Tax-exempt
Only one portion of a total property unit (example—a parking lot of a grocery store)
Value established by court action
Value is not more than $10,000
Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 2 is ineligible, use code number 3 as a substitute. If code number 3 is ineligible, use code number 4, etc., until an eligible property is found.

If the procedure described in 71.12(4)*"c"*(3)"3" moves the substitute property to a city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(4)*"c"*(3)"3" even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(4)*"c"*(3)"2." Alternate properties are selected by using the same procedure described in 71.12(4)*"c"*(3)"3."

5. Follow procedures 71.12(4)*"c"*(3), items "1" to "4," for each of the other originally selected sequence numbers.

71.12(5) *Industrial real estate.* It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the director may correct any errors in such assessments which are brought to the director's attention, including errors related to property with a dual classification if the primary use of the property is from the industrial portions.

71.12(6) *Centrally assessed property.* Property assessed by the director of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the director in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the director of revenue pursuant to rule 701—71.11(441).

71.12(7) *Miscellaneous real estate.* Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the director of revenue. However, under the circumstances set forth in Iowa Code section 421.17(10), the director may correct any errors in assessments which are brought to the director's attention.

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.
[**ARC 7726B**, IAB 4/22/09, effective 5/27/09; **ARC 9478B**, IAB 4/20/11, effective 5/25/11; **ARC 1765C**, IAB 12/10/14, effective 1/14/15]

701—71.13(441) Tentative equalization notices. Prior to the issuance of the final equalization order to each county auditor, a tentative equalization notice providing for proposed percentage adjustments to the aggregate valuations of classes of property as set forth in rule 701—71.12(441) shall be mailed to the county auditor whose valuations are proposed to be adjusted. The tentative equalization notice constitutes the ten days' notice required by Iowa Code section 441.48.

This rule is intended to implement Iowa Code sections 441.47 and 441.48.

701—71.14(441) Hearings before the director.

71.14(1) *Protests.* Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the director of revenue shall be made only on behalf of the

affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction's city council or board of supervisors, assessor, or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the director, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the director in reviewing the protests. Protests and hearings on tentative equalization notices before the director are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

71.14(2) *Conduct of hearing.* The director shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The director or the director's designated representative shall preside at the hearing which shall be held at the time and place designated by the director or such other time and place as may be mutually agreed upon by the director and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

701—71.15(441) Final equalization order. After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 701—71.14(441) has been afforded, the director shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

An assessing jurisdiction may appeal a final equalization order to the state board of tax review. The protest must be filed or postmarked not later than ten days after the date the final equalization order is issued.

This rule is intended to implement Iowa Code sections 441.48 and 441.49.

701—71.16(441) Alternative method of implementing equalization orders.

71.16(1) *Application for permission to use an alternative method.* A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the director of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

a. Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

b. The exact methods to be employed in implementing the requested alternative method for each class of property.

c. The specific method of notifying affected property owners of the valuation changes.

d. Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the director's final equalization order.

The director of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the director's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

71.16(2) *Implementation of alternative method.* If an alternative method is approved by the director of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

71.16(3) *Appeal by property owners.* If an alternative method is approved by the director of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

701—71.17(441) Special session of boards of review.

71.17(1) *Grounds for protest.* The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the director's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

71.17(2) *Authority of board of review.* When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the director of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the director's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

71.17(3) *Report of board of review.* In the report to the director of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the director of revenue to determine if such actions may have substantially altered the equalization order.

71.17(4) *Meetings of board of review.* If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

701—71.18(441) Judgment of assessors and local boards of review. Nothing stated in these rules should be construed as prohibiting the exercise of honest judgment, as provided by law, by the assessors and local boards of review in matters pertaining to valuing and assessing of individual properties within their respective jurisdictions.

This rule is intended to implement Iowa Code sections 441.17 and 441.35.

701—71.19(441) Conference boards.

71.19(1) *Establishment and abolition of office.*

a. As referred to in Iowa Code section 441.1, the term "federal census" includes any special census conducted by the Bureau of the Census of the U.S. Department of Commerce as well as the Bureau's decennial census.

b. Within 60 days of receiving the certified results of a federal census indicating the population of a city having its own assessor has fallen below 10,000, the city council of the city shall repeal the ordinance providing for its own assessor.

c. Whenever the office of city assessor is abolished, all moneys in the assessment expense fund and the special appraiser fund shall be transferred to the appropriate accounts in the county assessor's office, and all equipment and supplies shall be transferred to the county assessor's office. Employees of the city assessor's office may, at the discretion of the county assessor, become employees of the county assessor. However, any deputy assessor of the city may not be appointed a deputy county assessor unless certified as eligible for appointment pursuant to Iowa Code sections 441.5 and 441.10.

71.19(2) *Membership.*

a. County conference boards. A county conference board consists of the county board of supervisors, the mayor of each incorporated city in the county whose property is assessed by the county assessor, and one member of the board of directors of each high school district in the county, provided

the member is a resident of the county. Members representing school districts serve one-year terms, and the board of directors each year must notify the clerk of the conference board of its representative on the conference board. A member of the board of directors of a school district may serve on the county conference board even though the member lives in a city having its own assessor (1978 O.A.G. 466).

b. City conference boards. A city conference board consists of the county board of supervisors, the city council, and the entire board of directors of each school district whose property is assessed by the city assessor.

71.19(3) *Voting.*

a. Votes on matters before a conference board shall be by units as provided in Iowa Code section 441.2. At least two members of each voting unit must be present in order for the unit to cast a vote (1960 O.A.G. 226). In the event the vote of the members of a voting unit ends in a tie, that unit shall not cast a vote on the particular matter before the conference board.

b. If a member of a conference board is absent from a meeting, the member's vote may not be cast by another person, except that a mayor pro tem as provided in Iowa Code section 372.14(3) may vote for the mayor when the mayor is absent from or unable to perform official duties.

This rule is intended to implement Iowa Code section 441.2.

701—71.20(441) Board of review.

71.20(1) *Membership.*

a. Occupation of members. One member of the county board of review must be actively engaged in farming as that member's primary occupation. However, it is not necessary for a board of review to have as a member one licensed real estate broker and one registered architect or person experienced in the building and construction field if the person cannot be located after a good faith effort to do so has been made by the conference board (1966 O.A.G. 416). In determining eligibility for membership on a board of review, a retired person is not considered to be employed in the occupation pursued prior to retirement, unless that person remains in reasonable contact with the former occupation, including some participation in matters associated with that occupation.

b. Residency of members. A person must be a resident of the assessor jurisdiction served to qualify for appointment as a member of the board of review. However, a member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

c. Term of office. The term of office of members of boards of review shall be for six years and shall be staggered as provided in Iowa Code section 441.31. In the event of the death, resignation, or removal from office of a member of a board of review, the conference board or city council shall appoint a successor to serve the unexpired term of the previous incumbent.

d. Membership on other boards. A member of a board of review shall not at the same time serve on either the conference board or the examining board, or be an employee of the assessor's office (1948 O.A.G. 120, 1960 O.A.G. 226).

e. Number of members. A conference board or city council may at any time change the composition of a board of review to either three or five members. To reduce membership from five members to three members, the conference board or city council shall not appoint successors to fill the next two vacancies which occur (1970 O.A.G. 342). To increase membership from three members to five members, the conference board or city council shall appoint two additional members whose initial terms shall expire at such times so that no two board members' terms expire at the end of the same year. Also, the conference board or city council may increase the membership of the board of review by an additional two members if it determines that a large number of protests warrant the emergency appointments. If the board of review has ten members, not more than four additional members may be appointed by the conference board. The terms of the emergency members will not exceed two years.

f. Removal from office. A member of a board of review may be removed from office by the conference board or city council but only after specific charges have been filed by the conference board or city council.

g. Appointment of members. Members of a county board of review shall be appointed by the county conference board. Members of a city board of review shall be appointed by the city conference board in cities with an assessor or by the city council in cities without an assessor. A city without an assessor can only have a board of review if the population of the city is 75,000 or more. A city with a population of more than 125,000 may appoint a city board of review or request the county conference board to appoint a ten-member county board of review.

71.20(2) *Sessions of boards of review.*

a. It is mandatory that a board of review convene on May 1 and adjourn no later than May 31 of each year. However, if either date falls on a Saturday, Sunday, or legal holiday, the board of review shall convene or adjourn on the following Monday.

b. Extended session. If a board of review determines it will be unable to complete its work by May 31, it may request that the director of revenue extend its session up to July 15. The request must be signed by a majority of the membership of the board of review and must contain the reasons the board of review cannot complete its work by May 31. During the extended session, a board of review may perform the same functions as during its regular session unless specifically limited by the director of revenue.

c. Special session. If a board of review is reconvened by the director of revenue pursuant to Iowa Code section 421.17, the board of review shall perform those functions specified in the order of the director of revenue and shall perform no other functions.

71.20(3) *Actions initiated by boards of review.*

a. Internal equalization of assessments. A board of review in reassessment years as provided in Iowa Code section 428.4 has the power to equalize individual assessments as established by the assessor, but cannot make percentage adjustments in the aggregate valuations of classes of property (1966 O.A.G. 416). In nonreassessment years, a board of review can adjust the valuation of an entire class of property by adjusting all assessment by a uniform percentage. Nothing contained in this rule shall restrict the director from exercising the responsibilities set forth in Iowa Code section 421.17.

b. Omitted assessments. A board of review may assess for taxation any property which was not assessed by the assessor, including property which the assessor determines erroneously is not subject to taxation by virtue of enjoying an exempt status (*Talley v. Brown,* 146 Iowa 360,125 N.W. 248 (1910)).

c. Notice to taxpayers. If the value of any property is increased by a board of review or a board of review assesses property not previously assessed by the assessor, the person to whom the property is assessed shall be notified by regular mail of the board's action. The notification shall state that the taxpayer may protest the action by filing a written protest with the board of review within five days of the date of the notice. After at least five days have passed since notifying the taxpayer, the board of review shall meet to take final action on the matter, including the consideration of any protest filed. However, if the valuations of all properties within a class of property are raised or lowered by a uniform percentage in a nonreassessment year, notice to taxpayers need be provided only by newspaper publication as described in Iowa Code section 441.35.

71.20(4) *Appeals to boards of review.*

a. A board of review may act only upon written protests which have been filed with the board of review between April 16 and May 5, inclusive. In the event May 5 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by May 5 or the following Monday if May 5 falls on a Saturday or Sunday shall also be considered to have been timely filed. All protests must be in writing and signed by the taxpayer or the taxpayer's authorized agent. A written request for an oral hearing must be made at the time of filing the protest and may be made by checking the appropriate box on the form prescribed by the department of revenue. Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged. The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings

be held consecutively. A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.

b. Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) The assessment is not equitable when compared with those of similar properties in the same assessing district. If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (*Maytag Co. v. Partridge,* 210 N.W.2d 584 (Iowa 1973)). In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property and the comparable properties and determine that those properties are indeed comparable to the subject property. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments (*Chicago & N. W. Ry. Co. v. Iowa State Tax Commission,* 257 Iowa 1359,137 N.W.2d 246(1965)).

(2) The property is assessed at more than its actual value as defined in Iowa Code section 441.21. If this ground is used, the taxpayer must state both the amount by which the property is overassessed and the amount considered to be the actual value of the property.

(3) The property is not assessable and should be exempt from taxation. If using this ground, taxpayers must state the reasons why it is felt the property is not assessable.

(4) There is an error in the assessment. An error in the assessment would most probably involve erroneous mathematical computations or errors in listing the property. The improper classification of property also constitutes an error in the assessment. If this ground is used, the taxpayer's protest must state the specific error alleged.

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) There is fraud in the assessment. If this ground of protest is used, the taxpayer's protest must state the specific fraud alleged, and the board of review must first determine if there is validity to the taxpayer's allegation. If it is determined there is fraud in the assessment, the board of review shall take action to correct the assessment and report the matter to the director of revenue.

(6) There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods Co. v. Board of Review for City of Waterloo,* 260 Iowa 1269,151 N.W.2d 534 (1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City,* 229 Iowa 1081, 296 N.W. 203 (1941)).

c. Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The notice shall contain the following information:

(1) The valuation and classification of the property as determined by the board of review.

(2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.

(3) The specific reasons for the board's decision with respect to the protest.

(4) That the board of review's decision may be appealed to the district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no

earlier than May 31. Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.

This rule is intended to implement Iowa Code sections 441.31 to 441.37 and Iowa Code Supplement section 441.38 as amended by 2006 Iowa Acts, House File 2794.

701—71.21(421,17A) Property assessment appeal board. This rule applies to appeals filed before January 1, 2015, in which the property assessment appeal board has jurisdiction to hear appeals from the action of a local board of review. Appeals filed on or after January 1, 2015, are governed by 701—Chapter 126.

71.21(1) *Establishment, membership, and location of the property assessment appeal board.*

a. A statewide property assessment appeal board is created for the purpose of establishing a consistent, fair, and equitable property assessment appeal process. The statewide property assessment appeal board is established within the department of revenue. The board's principal office shall be in the office of the department of revenue.

b. The property assessment appeal board shall consist of three members appointed by the governor and subject to confirmation by the senate. The members shall be appointed to staggered six-year terms beginning initially on January 1, 2007, and ending as provided in Iowa Code section 69.19. Members' subsequent terms shall begin and end as provided in Iowa Code section 69.19. The governor shall appoint from the members a chairperson, subject to confirmation by the senate, of the board to a two-year term. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as regular appointments are made.

Each member of the property assessment appeal board shall be qualified by virtue of at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration. Two members of the board shall be certified real property appraisers and one member shall be an attorney practicing in the area of state and local taxation or property tax appraisals. No more than two members of the board may be from the same political party as that term is defined in Iowa Code section 43.2.

c. The property assessment appeal board shall organize by appointing a secretary who shall take the same oath of office as the members of the board. The board may employ additional personnel as it finds necessary. All personnel employed by the board shall be considered state employees and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

71.21(2) *Powers and duties of the board.* The property assessment appeal board shall:

a. Review any final decision, finding, ruling, determination, or order of a local board of review relating to assessment protests, valuation, or application of an equalization order.

b. Affirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review.

c. Order the payment or refund of property taxes in a matter over which the board has jurisdiction.

d. Grant other relief or issue writs, orders, or directives that the board deems necessary or appropriate in the process of disposing of a matter over which the board has jurisdiction.

e. Subpoena documents and witnesses and administer oaths.

f. Adopt administrative rules pursuant to Iowa Code chapter 17A for the administration and implementation of its powers, including rules for practice and procedure for protests filed with the board, the manner in which hearings on appeals of assessments shall be conducted, filing fees to be imposed by the board, and for the determination of the correct assessment of property which is the subject of an appeal.

g. Adopt administrative rules pursuant to Iowa Code chapter 17A necessary for the preservation of order and the regulation of proceedings before the board, including forms or notice and the service thereof, which rules shall conform as nearly as possible to those in use in the courts of this state.

h. If an appeal to district court is taken from the action of the property assessment appeal board, notice of appeal shall be served as an original notice on the secretary of the board after the written notice of appeal has been filed with the clerk of district court.

71.21(3) *General counsel.* The property assessment appeal board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and shall represent the board in all actions instituted in a court challenging the validity of a rule or order of the board. The general counsel shall devote full time to the duties of the office. During employment as general counsel to the board, the counsel shall not be a member of a political committee, contribute to a political campaign, participate in a political campaign, or be a candidate for partisan political office. The general counsel and assistants to the general counsel shall be considered state employees and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

71.21(4) *Compensation.* The members of the property assessment appeal board shall receive a salary set by the governor within a range established by the general assembly. The members of the board shall be considered state employees for purposes of salary and benefits and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV. Members of the board and any employees of the board, when required to travel in the discharge of official duties, shall be paid their actual and necessary expenses incurred in the performance of their duties.

71.21(5) *Applicability and scope.* These subrules set forth herein govern the proceedings for all cases in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review. For the purpose of these subrules, the following definitions shall apply:

"Appellant" means the party filing the notice of appeal with the secretary of the property assessment appeal board.

"Board" means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

"Department" means the Iowa department of revenue.

"Local board of review" means the board of review as defined by Iowa Code section 441.31.

"Party" means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the property assessment appeal board.

"Secretary" means the secretary for the property assessment appeal board.

71.21(6) *Appeal and jurisdiction.* Notice of appeal confers jurisdiction for the board. The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by written notice of appeal given to the secretary. The written notice of appeal shall include a petition setting forth the basis of the appeal and the relief sought. The written notice of appeal shall be filed with the secretary within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced. The appeal is a contested case.

b. Notice of appeal may be delivered in person, mailed by first-class mail, delivered to an established courier service for immediate delivery, or e-mailed to the board at paab@iowa.gov.

c. For an appeal filed by e-mail to be timely, it must be received by the board by 11:59 p.m. on the last day for filing as established within the time period set forth in paragraph 71.21(6)*"a."*

71.21(7) *Form of appeal.* The notice of appeal shall include:

a. The appellant's name, mailing address, e-mail address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. A copy of the letter of disposition by the local board of review;

d. A short and plain statement of the claim showing that the appellant is entitled to relief;

e. The relief sought; and

f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

71.21(8) *Scope of review.* The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. The burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

71.21(9) *Notice to local board of review.* The secretary shall mail a copy of the appellant's written notice of appeal and petition to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review.

71.21(10) *Certification by local board of review.*

a. Initial certification. Within 21 days after notice of appeal is given, the local board of review shall certify to the board the original notice of assessment if any, the petition to the board of review, and a copy of the board of review's letter of disposition.

The local board of review shall also submit to the board in writing the name, address, telephone number, and e-mail address of the attorney representing the local board of review before the board. The local board of review may request additional time to certify a copy of its record to the board by submitting a request in writing or by e-mail to the board at paab@iowa.gov.

b. Full record certification prior to hearing. At least 21 calendar days prior to the contested case hearing, the local board of review shall certify to the board the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and any information provided to or considered by the local board of review as part of the protest. The local board of review shall also send a copy of the full record to the opposing party.

71.21(11) *Docketing.* Appeals shall be assigned consecutive docket numbers. Records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the secretary. The records of each case shall also include each action and each act done, with the proper dates as follows:

a. The title of the appeal including jurisdiction and parcel identification number;
b. Brief statement of the grounds for the appeal and the relief sought;
c. Postmarked date of the local board of review's letter of disposition;
d. The manner and date/time of service of notice of appeal;
e. Date of notice of hearing;
f. Date of hearing; and
g. The decision by the board, or other disposition of the case, and date thereof.

71.21(12) *Appearances.* Any party may appear and be heard on its own behalf, or by its designated representative. A designated representative shall file a notice of appearance with the board for each case in which the representative appears for a party. Filing a motion or pleadings on behalf of a party shall be equivalent to filing a notice of appearance. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

71.21(13) *Service and filing of papers.* After the notice of appeal and petition have been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on a party—how and when made. The parties may agree to exchange the certified record, motions, pleadings, briefs, exhibits, and any other papers with each other electronically or via any other means. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent electronically if the parties have agreed to service by such means.

b. Filing with the board—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent by e-mail as permitted by the applicable subrules of this rule.

(1) For most filings in a docket made with the board, only an original is required.

(2) For exhibits and other documents to be introduced at hearing, three copies are required. For a nonoral submission, only one copy is required.

(3) The board or presiding officer may request additional copies.

c. *Proof of mailing.* Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).
>
> (Date) (Signature)

71.21(14) *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the secretary and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 71.21(34).

71.21(15) *Authority of board to issue procedural orders.* The board may issue preliminary orders regarding procedural matters. The secretary shall mail copies of all procedural orders to the parties.

71.21(16) *Members participating.* Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

71.21(17) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the secretary shall mail a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 71.21(18). The notice of hearing shall contain the following information:

a. A statement of the date, time, and place of the hearing;

b. A statement of legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. That the parties may appear and present oral arguments;

e. That the parties may submit evidence and briefs;

f. That the hearing will be electronically recorded by the board;

g. That a party may obtain a certified court reporter for the hearing at the party's own expense;

h. That audio visual aids and equipment are to be provided by the party intending to use them;

i. A statement that, upon submission of the appeal, the board will take the matter under advisement. A letter of disposition will be mailed to the parties; and

j. A compliance notice required by the Americans with Disabilities Act (ADA).

71.21(18) *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing. The waiver must be in writing or by e-mail to paab@iowa.gov and signed by the parties or their designated representatives. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.

71.21(19) *Transcript of hearing.* All hearings shall be electronically recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.

71.21(20) *Continuance.* Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing or by e-mail to paab@iowa.gov and promptly filed with the secretary of the board immediately upon "the cause" becoming known. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors, including the existence of a scheduling order.

71.21(21) *Telephone proceedings.* The board or presiding officer may conduct a telephone conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

71.21(22) *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;

(6) Has a spouse or relative within the third degree of relationship who:

1. Is a party to the appeal, or an officer, director or trustee of a party;
2. Is a lawyer in the appeal;
3. Is known to have an interest that could be substantially affected by the outcome of the appeal; or
4. Is likely to be a material witness in the appeal; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in paragraph *"a,"* the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.

c. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

d. Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

71.21(23) *Consolidation and severance.* The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

71.21(24) *Withdrawal.* An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing or by e-mail to paab@iowa.gov and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board granting a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

71.21(25) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose.

Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

71.21(26) *Scheduling orders.*

a. When required. For appeals involving properties classified commercial or industrial and assessed at $2 million or more, a scheduling order shall be sent to the parties to set dates for discovery, designation of witnesses, filing of motions, exchange of evidence, and a contested case hearing. In any other appeal, the parties may jointly enter a scheduling order or the board may, on its own motion, issue a scheduling order. The dates established in a scheduling order under this subrule shall supersede any dates set forth in other subrules of this rule.

b. Prehearing conference. A party may request a prehearing conference to resolve scheduling issues.

c. Modification. The parties may jointly agree to modify a scheduling order. If one party seeks to modify a scheduling order, the party must show good cause for the modification.

d. Failure to comply. A party that fails to comply with a scheduling order shall be required to show good cause for failing to comply with the order and that the other party is not substantially prejudiced. Failing to comply with a scheduling order may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.

71.21(27) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

a. Authority of presiding officer. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

b. Representation. Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative.

c. Participation in hearing. The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

d. Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

e. Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

71.21(28) *Discovery.*

a. Discovery procedure. Discovery procedures applicable in civil actions under the Iowa Rules of Civil Procedure are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Discovery motions. Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order

of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

c. Admissibility of evidence. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

71.21(29) *Subpoenas.*

a. Issuance of Subpoena for Witness.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 10 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

b. Issuance of Subpoena for Production of Documents.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 20 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

c. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure.

71.21(30) *Evidence.*

a. Admissibility. The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law.

b. Stipulations. Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision. Irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have entered a scheduling order under subrule 71.21(26). All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits with consecutive numbers. The appellee shall mark exhibits with consecutive letters.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony.

If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

71.21(31) *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed in writing or by an electronic copy e-mailed to paab@iowa.gov. The board will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

71.21(32) *Records access.*

a. Location of record. A request for access to a record should be directed to the custodian.

b. Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

c. Request for access. Requests for access to open records may be made in writing, in person, by e-mail, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, e-mail, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

d. Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law.

e. Security of record. No person may, without permission from the secretary, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary. Records shall be protected from damage and disorganization.

f. Copying. A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

g. Fees.

(1) When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

(2) Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

(3) Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

(4) Advance deposits.

1. When the estimated total fee chargeable under this paragraph exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

2. When a requester has previously failed to pay a fee chargeable under this paragraph, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

71.21(33) *Motion to reopen records.* The board or presiding officer, on the board's or presiding officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

71.21(34) *Rehearing and reconsideration.*

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

c. Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. Requirements for objections to applications for rehearing or reconsideration. An answer or objection to an application for rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

71.21(35) *Dismissal.* If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

71.21(36) *Waivers.*

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

(2) The waiver would not prejudice the substantial rights of any person;

(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

71.21(37) *Appeals of board decisions.* A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

71.21(38) *Stays of agency actions.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)*"c."* A stay may be vacated by the board upon application of any other party.

71.21(39) *Time requirements.* Time shall be computed as provided in Iowa Code section 4.1(34).

71.21(40) *Judgment of the board.* Nothing in this rule should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

This rule is intended to implement Iowa Code sections 421.1, 421.1A as amended by 2013 Iowa Acts, Senate File 295, division VI, 421.2, 441.37A as amended by 2013 Iowa Acts, Senate File 295, division VI, 441.38 and 441.49 and chapter 17A.

[**ARC 9877B**, IAB 11/30/11, effective 1/4/12; **ARC 1306C**, IAB 2/5/14, effective 3/12/14; **ARC 1496C**, IAB 6/11/14, effective 5/20/14; **ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—71.22(428,441) Assessors.

71.22(1) *Conflict of interest.* An assessor shall not act as a private appraiser, or as a real estate broker or option agent in the jurisdiction in which serving as assessor (1976 O.A.G. 744).

71.22(2) *Listing of property.*

a. Forms. Assessors may design and use their own forms in lieu of those prescribed by the department of revenue provided that the forms contain all information contained on the prescribed form, are not substantially different from the prescribed form, and are approved by the director of revenue.

b. Assessment rolls. Assessment rolls must be prepared in duplicate for each property in a reassessment year as defined in Iowa Code section 428.4. However, the copy of the roll does not have to be issued to a taxpayer unless there is a change in the assessment or the taxpayer requests the issuance of the duplicate copy.

c. Whenever a date specified in Iowa Code chapter 441 falls on a Saturday, Sunday, or legal holiday, the action required to be completed on or before that date shall be considered to have been timely completed if performed on or before the following day which is not a Saturday, Sunday, or holiday.

d. Buildings erected or improvements made by a person other than the owner of the land on which they are located are to be assessed to the owner of the buildings or improvements. Unpaid taxes are a lien on the buildings or improvements and not a lien on the land on which they are located.

71.22(3) *Notice of protest.* If a protest or appeal is filed with the board of review, property assessment appeal board, or district court against the assessment of property valued at $5 million or more, the assessor shall provide notice to the school district in which the property is located within ten days of the filing of the protest or the appeal, as applicable.

This rule is intended to implement Iowa Code chapter 428 and Iowa Code chapter 441 as amended by 2006 Iowa Acts, House File 2797.

701—71.23(421,428,441) Valuation of multiresidential real estate. Multiresidential real estate shall be assessed at a percent of its actual value as defined in Iowa Code section 441.21. In determining the actual value of multiresidential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21 as amended by 2013 Iowa Acts, Senate File 295.

[**ARC 1765C**, IAB 12/10/14, effective 1/14/15]

701—71.24(421,428,441) Valuation of dual classification property. Real estate with a dual classification of commercial/multiresidential or industrial/multiresidential shall be assessed at its actual value as defined in Iowa Code section 441.21.

71.24(1) *Allocation of dual classification values.* The assessor shall value as a whole properties that have portions classified as multiresidential and portions classified as commercial or industrial using

the methodology found in rule 701—71.23(421,428,441). After the assessor has assigned a value to the property, the value shall be allocated between the two classes of property based on the appropriate appraisal methodology. The assessor shall allocate land value proportionately by class.

71.24(2) *Notice of valuation.* The valuation notice issued pursuant to Iowa Code section 441.23 shall include a breakdown of the valuation by class for the current year and the prior year.

71.24(3) *Protest of assessment.* The valuation and assessment of property with a dual classification shall be considered one assessment, and any protest of assessment brought under Iowa Code section 441.37 or subsequent appeal must be made on the entire assessment. Protests of assessments on the valuation of only one class of property are not permitted. The board of review shall review the valuation in total as both classifications are subject to the board's adjustment in any review proceeding. Likewise, any tribunal or court reviewing the board's decision shall base its review on the entire assessment.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21 as amended by 2013 Iowa Acts, Senate File 295.

[**ARC 1765C**, IAB 12/10/14, effective 1/14/15]

701—71.25(441,443) Omitted assessments.

71.25(1) *Property subject to omitted assessment.*

a. Land and buildings. An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

b. Previously exempt property. Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See *Talley v. Brown,* 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made to restore to taxation previously exempt property which ceases to be eligible for an exemption.

71.25(2) *Officials authorized to make an omitted assessment.*

a. Local board of review. A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

b. County auditor and local assessor. The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984).

c. County treasurer. The county treasurer may make an omitted assessment within two years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1999 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 2000. Thus, the county treasurer may make an omitted assessment for the 1999 assessment year at any time on or before June 30, 2002. The county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See *Okland v. Bilyeu,* 359 N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

d. Director of revenue. The director of revenue may make an omitted assessment of any property assessable by the director at any time within two years from the date the assessment should have been made.

This rule is intended to implement Iowa Code chapter 440 and sections 443.6 through 443.15 as amended by 1999 Iowa Acts, chapter 174.

701—71.26(441) Assessor compliance. The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

The plan shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The plan of action shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

By January 1 of the assessment year following the calendar year in which the plan was submitted to the department, the conference board shall submit a report to the department verifying that the plan of action was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the reimbursement payment authorized in Iowa Code section 425.1 until the director of revenue determines that the assessor is in compliance.

If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the state board of tax review.

This rule is intended to implement Iowa Code Supplement section 441.21.

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CHAPTER 126
PROPERTY ASSESSMENT APPEAL BOARD

701—126.1(421,441) Applicability and definitions.

126.1(1) *Applicability and scope.* The rules set forth in this chapter govern the proceedings for all cases filed on or after January 1, 2015, in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review.

126.1(2) *Definitions.* For the purpose of these rules, the following definitions shall apply:

"Appellant" means the party filing the notice of appeal with the secretary of the property assessment appeal board.

"Board" means the property assessment appeal board as created by Iowa Code section 421.1A and governed by Iowa Code chapter 17A and section 441.37A.

"Department" means the Iowa department of revenue.

"Local board of review" means the board of review as defined by Iowa Code section 441.31.

"Party" means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the property assessment appeal board.

"Secretary" means the secretary for the property assessment appeal board.

126.1(3) *Waivers.*

a. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

(2) The waiver would not prejudice the substantial rights of any person;

(3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

b. Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

c. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

126.1(4) *Time requirements.* Time shall be computed as provided in Iowa Code section 4.1(34).

126.1(5) *Judgment of the board.* Nothing in this chapter should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.2(421,441) Appeal and certification.

126.2(1) *Appeal and jurisdiction.* The procedure for appeals and parameters for jurisdiction are as follows:

a. Jurisdiction is conferred upon the board by written notice of appeal given to the secretary. The written notice of appeal shall include a petition setting forth the basis of the appeal and the relief sought. The written notice of appeal shall be filed with the secretary within 20 calendar days after the date of adjournment of the local board of review or May 31, whichever is later. Appeals postmarked within this time period shall also be considered to have been timely filed.

b. Notice of appeal may be delivered in person, mailed by first-class mail, delivered to an established courier service for immediate delivery, or e-mailed to the board at paab@iowa.gov.

c. For an appeal filed by e-mail to be timely, it must be received by the board by 11:59 p.m. on the last day for filing as established within the time period set forth in paragraph 126.2(1)*"a."*

126.2(2) *Form of appeal.* The notice of appeal shall include:

a. The appellant's name, mailing address, e-mail address, and telephone number;

b. The address of the property being appealed and its parcel number;

c. A copy of the letter of disposition by the local board of review;

d. A short and plain statement of the claim showing that the appellant is entitled to relief;

e. The relief sought; and

f. If the party is represented by an attorney or designated representative, the attorney or designated representative's name, mailing address, e-mail address, and telephone number.

126.2(3) *Scope of review.*

a. Grounds for appeal. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. No new grounds in addition to those set out in the protest to the local board of review can be pleaded, but additional evidence to sustain those grounds may be introduced. The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof.

b. Burden of proof. There shall be no presumption as to the correctness of the valuation of the assessment appealed from. The burden of proof is on the appellant; however, when the appellant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the party seeking to uphold the valuation.

c. The appeal is a contested case.

126.2(4) *Notice to local board of review.* The secretary shall mail a copy of the appellant's written notice of appeal and petition to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review.

126.2(5) *Certification by local board of review.*

a. Initial certification.

(1) Within 21 days after notice of appeal is given, the local board of review shall certify to the board the original notice of assessment if any, the petition to the board of review, and a copy of the board of review's letter of disposition.

(2) The local board of review shall also submit to the board in writing the name, address, telephone number, and e-mail address of the attorney representing the local board of review before the board. The local board of review may request additional time to certify a copy of its record to the board by submitting a request in writing or by e-mail to the board at paab@iowa.gov.

b. Full record certification prior to hearing.

(1) At least 21 calendar days prior to the contested case hearing, the local board of review shall certify to the board the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and any information provided to or considered by the local board of review as part of the protest.

(2) The local board of review shall also send a copy of the full record to the opposing party.

126.2(6) *Docketing.* Appeals shall be assigned consecutive docket numbers. Records consisting of the case name and the corresponding docket number assigned to the case shall be maintained by the secretary. The records of each case shall also include each action and each act done, with the proper dates, as follows:

a. The title of the appeal including jurisdiction and parcel identification number;

b. Brief statement of the grounds for the appeal and the relief sought;

c. Postmarked date of the local board of review's letter of disposition;

d. The manner and date/time of service of notice of appeal;

e. Date of notice of hearing;

f. Date of hearing; and

g. The decision by the board, or other disposition of the case, and date thereof.

126.2(7) *Consolidation and severance.* The board or presiding officer may determine if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

a. Consolidation. The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

(1) The matters at issue involve common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues involved; and

(3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

b. Severance. The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

126.2(8) *Appearances.* Any party may appear and be heard on its own behalf, or by its designated representative. A designated representative shall file a notice of appearance with the board for each case in which the representative appears for a party. Filing a motion or pleadings on behalf of a party shall be equivalent to filing a notice of appearance. A designated representative who is not an attorney shall also file a power of attorney. When acting as a designated representative on behalf of a party, the designated representative acknowledges that the representative has read and will abide by the board's rules.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.3(421,441) Service on parties and filing with the board.

126.3(1) *Service and filing of papers.* After the notice of appeal and petition have been filed, all motions, pleadings, briefs, and other papers shall be served upon each of the parties of record contemporaneously with their filing with the board.

a. Service on a party—how and when made. The parties may agree to exchange the certified record, motions, pleadings, briefs, exhibits, and any other papers with each other electronically or via any other means. All documents are deemed served at the time they are delivered in person to the opposing party; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent electronically if the parties have agreed to service by such means.

b. Filing with the board—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board; delivered to an established courier service for immediate delivery; mailed by first-class mail, so long as there is proof of mailing; or sent by e-mail as permitted by this chapter.

(1) For most filings in a docket made with the board, only an original is required.

(2) For exhibits and other documents to be introduced at hearing, three copies are required. For a nonoral submission, only one copy is required.

(3) The board or presiding officer may request additional copies.

c. Proof of mailing. Proof of mailing includes: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Property Assessment Appeal Board and to the names and addresses of the parties listed below by depositing the same in a (United States post office mailbox with correct postage properly affixed).
>
> (Date) (Signature)

126.3(2) Reserved.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.4 Reserved.

701—126.5(421,441) Motions and settlements.

126.5(1) *Authority of board to issue procedural orders.* The board may issue preliminary orders regarding procedural matters. The secretary shall mail copies of all procedural orders to the parties.

126.5(2) *Motions.* No technical form for motions is required. All prehearing motions shall be in writing, shall be filed with the secretary and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer. The presiding officer may schedule oral argument on any motion.

a. Filing of motions. Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 10 days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the board or presiding officer.

b. Motions for summary judgment.

(1) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this chapter or any other provision of law governing the procedure in contested cases.

(2) Motions for summary judgment must be filed and served no later than 90 days after service of the notice of appeal, unless good cause is shown for a later filing. Good cause may include, but is not limited to, information the moving party obtains through discovery. Any party resisting the motion shall file and serve a resistance within 20 days, unless otherwise ordered by the board or presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 30 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 126.9(2).

c. Motions to withdraw. An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing or by e-mail to paab@iowa.gov and signed by the appellant or the appellant's designated representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board's granting of a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

126.5(3) *Settlements.* Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. A settlement of an appeal shall be jointly signed by the parties, or their designated representatives, and filed in writing or by an electronic copy e-mailed to paab@iowa.gov. The board will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.6(421,441) Hearing scheduling and discovery plan.

126.6(1) *When required.* For appeals involving properties classified commercial or industrial and assessed at $2 million or more, a scheduling order shall be sent to the parties to set dates for discovery, designation of witnesses, filing of motions, exchange of evidence, and a contested case hearing. In any other appeal, the parties may jointly enter a scheduling order or the board may, on its own motion, issue a scheduling order. The dates established in a scheduling order under this rule shall supersede any dates set forth in any other rule in this chapter.

126.6(2) *Prehearing conference.* A party may request a prehearing conference to resolve scheduling issues.

126.6(3) *Modification.* The parties may jointly agree to modify a scheduling order. If one party seeks to modify a scheduling order, the party must show good cause for the modification.

126.6(4) *Failure to comply.* A party that fails to comply with a scheduling order shall be required to show good cause for failing to comply with the order and that the other party is not substantially prejudiced. Failing to comply with a scheduling order may result in sanctions including, but not limited to, the exclusion of evidence or dismissal of the appeal.
[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.7(421,441) Discovery and evidence.

126.7(1) *Discovery procedure.* Discovery procedures applicable in civil actions under the Iowa Rules of Civil Procedure are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

126.7(2) *Discovery motions.* Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

126.7(3) *Evidence.*

a. Admissibility. The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law. Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

b. Stipulations. Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

c. Scope of admissible evidence. Evidence in the proceeding shall be confined to the issues contained in the notice from the board prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision. Irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

d. Exhibits, exhibit and witness lists, and briefs. The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence, exhibit lists, and a list of witnesses intended to be called at hearing shall be served on the opposing party at least 21 calendar days prior to the hearing, unless the time period is extended or shortened by the board or presiding officer or the parties have entered a scheduling order under rule 701—126.6(421,441). All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits with consecutive numbers. The appellee shall mark exhibits with consecutive letters.

e. Objections. Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

f. Offers of proof. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

126.7(4) *Subpoenas.*

a. Issuance of subpoena for witness.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 10 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

b. Issuance of subpoena for production of documents.

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 20 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

c. Motion to quash or modify. Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason in accordance with the Iowa Rules of Civil Procedure.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.8(421,441) Hearings before the board.

126.8(1) *Prehearing conference.* An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

126.8(2) *Notice of hearing.* Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the secretary shall mail a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 126.8(3). The notice of hearing shall contain the following information:

a. A statement of the date, time, and place of the hearing;

b. A statement of legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. That the parties may appear and present oral arguments;

e. That the parties may submit evidence and briefs;

f. That the hearing will be electronically recorded by the board;

g. That a party may obtain a certified court reporter for the hearing at the party's own expense;

h. That audiovisual aids and equipment are to be provided by the party intending to use them;

i. A statement that, upon submission of the appeal, the board will take the matter under advisement. A letter of disposition will be mailed to the parties; and

j. A compliance notice required by the Americans with Disabilities Act (ADA).

126.8(3) *Waiver of 30-day notice.* The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing. The waiver must be in writing or by e-mail to paab@iowa.gov and signed by the parties or their designated representatives. By waiving notice, the parties acknowledge they are ready to proceed with the hearing. The parties will be contacted when a hearing date is available but notice for said date may be less than 30 days. The parties will have the right to accept or reject the hearing date.

126.8(4) *Continuance.* Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing or by e-mail to paab@iowa.gov and promptly filed with the secretary of the board immediately upon "the cause" becoming known. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

a. Prior continuances;
b. The interests of all parties;
c. The likelihood of informal settlement;
d. The existence of an emergency;
e. Any objection;
f. Any applicable time requirements;
g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
h. The timeliness of the request; and
i. Other relevant factors, including the existence of a scheduling order.

126.8(5) *Telephone proceedings.* The board or presiding officer may conduct a telephone conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

126.8(6) *Hearing procedures.* A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

a. Authority of presiding officer. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

b. Representation. Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative.

c. Participation in hearing. The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

d. Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

e. Conduct of the hearing. The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

126.8(7) *Dismissal.* If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

126.8(8) *Transcript of hearing.* All hearings shall be electronically recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.

126.8(9) *Members participating.* Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

126.8(10) *Disqualification of board member.* A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;

(6) Has a spouse or relative within the third degree of relationship who:

1. Is a party to the appeal, or an officer, director or trustee of a party;
2. Is a lawyer in the appeal;
3. Is known to have an interest that could be substantially affected by the outcome of the appeal; or
4. Is likely to be a material witness in the appeal; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification.

(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph 126.8(10)*"a,"* the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.

c. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

d. Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.9(421,441) Posthearing motions.

126.9(1) *Motion to reopen records.* The board or presiding officer, on the board's or presiding officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

126.9(2) *Rehearing and reconsideration.*

a. Application for rehearing or reconsideration. Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued.

b. Contents of application. Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

c. Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

d. Requirements for objections to applications for rehearing or reconsideration. An answer or objection to an application for rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board.

e. Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.10(17A,441) Judicial review.

126.10(1) *Appeals of board decisions.* A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court where the property is located within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant. Iowa Code chapter 17A applies to judicial review of the board's final decision. The filing of the petition does not itself stay execution or enforcement of the board's final decision. The board may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

126.10(2) *Stays of agency actions.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. In determining whether to grant a stay, the board or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)*"c."* A stay may be vacated by the board upon application of any other party.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

701—126.11(22,421) Records access.

126.11(1) *Location of record.* A request for access to a record should be directed to the custodian.

126.11(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday excluding holidays.

126.11(3) *Request for access.* Requests for access to open records may be made in writing, in person, by e-mail, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, e-mail, and telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

126.11(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request,

shall promptly provide that notice to the requester in writing. The custodian of a record may deny access by members of the public to the record only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court or board order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the applicable provisions of law.

126.11(5) *Security of record.* No person may, without permission from the secretary, search or remove any record from board files. Examination and copying of board records shall be supervised by the secretary. Records shall be protected from damage and disorganization.

126.11(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available, the custodian shall permit examination of the record and shall arrange to have copies promptly made elsewhere.

126.11(7) *Fees.*

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board are available from the custodian. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and made available by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall provide the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a board clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[**ARC 2108C**, IAB 8/19/15, effective 9/23/15]

These rules are intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapters 17A and 22.

[Filed ARC 2108C (Notice ARC 2047C, IAB 6/24/15), IAB 8/19/15, effective 9/23/15]

CHAPTERS 127 to 149
Reserved